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COMPREHENSIVE INFORMATION SYSTEM

Legal information services

Report of the Secretary-General

SUMMARY

The present report provides a brief account of the legal information services provided by the United Nations Centre on Transnational Corporations. It identifies the main sources of legal information that are of importance to potential foreign investors and officials in host countries and considers the various legal information needs that all parties interested in foreign investment projects may have from time to time. In recognition of such needs, the Centre has, in recent years, developed a fairly extensive collection of legal material and has taken steps to disseminate relevant information when so requested by individual developing countries. The main forms of legal information currently held by the Centre include texts of national laws and regulations on foreign direct investment, contracts completed between Governments and transnational corporations on a wide range of issues and analytical studies on various investment matters. While questions of confidentiality and the problem of limited resources circumscribe some aspects of the Centre's work in disseminating legal information to developing countries, efforts continue to be made to improve the quality of the Centre's contribution in this important field.

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INTRODUCTION

1. At its sixteenth session, the Commission on Transnational Corporations requested that the Secretary-General submit to it at its seventeenth session a report on the experience gained in the development of the comprehensive information system, taking into account the views by delegations at its sixteenth session. The present report dealing with legal information services provided under the Centre's comprehensive information system has been prepared in response to that request.

I. THE NEED FOR LEGAL INFORMATION SERVICES

2. An essential ingredient in sound decision-making is access to appropriate, adequate and timely information. In negotiations between transnational corporations and host countries, access to legal information is a crucial factor for both parties. On the one hand, for the transnational corporation that is a potential investor there will be a need to gather as much information as is available on the general policies of the host country as well as on the legal and regulatory framework that would govern the proposed investment. On the other, the host Government would be well-advised to identify those elements of the proposed arrangement that are likely to be considered absolutely essential by the transnational corporation as well as those elements that the Government should stress to obtain the best terms for itself. A critical requirement for this type of analysis would be adequate information about the transnational corporation's operations in its home country as well as in other host countries and the types of legal arrangements governing those operations.

3. Against this background, it needs to be emphasized that, even with respect to individual investment projects, the scope of what constitutes "legal information" should not be narrowly construed. In essence, "legal information" constitutes all forms of information that relate to the laws and regulations of a particular State; and, as such, it embraces not only the legal norms that apply directly to a given project, but also the institutional aspects of the prevailing legal regime, together with its procedure and other conventions.

4. With respect to all foreign investment projects, therefore, potential investors and their government counterparts often need, at the very least, to peruse the following legal sources: the foreign investment law of the country concerned, its exchange control and taxation regimes, relevant property, company and contract laws (including, where applicable, joint venture rules and regulations), its administrative rules and procedures and its regulations pertaining to foreign trade and payments. In addition, in the case of natural resource projects, there will almost invariably be a complex structure of mining and petroleum laws requiring scrupulous attention; and, increasingly, advisers also need to examine bilateral and multilateral international arrangements that touch on and concern foreign investment issues.

5. It should also be noted that the process of acquiring legal information cannot be effectively undertaken without some knowledge of the interplay between various

sources of the law. In most jurisdictions, the constitution may provide guidance on the hierarchy of legal sources, so that where two sets of laws appear to be contradictory there will be an accepted method for identifying the rules that should prevail. In a similar fashion, the constitution may also contain a number of fundamental principles that are to be used in assessing the validity of all laws within a given country; in their investment relations, therefore, foreign entrepreneurs and their government counterparts need to be fully familiar with the constitution of the host country concerned.

6. It is a truism that as national economies increase in sophistication, they give rise to more complex and intricate legal rules and regulations. In the present context, this means that advisers should remain mindful that legal information on foreign investment is hardly ever static. In the case of common law jurisdictions, for example, relevant legislation and general principles are constantly being interpreted by domestic courts; consequently, the stock of legal rules on investment issues is polished and replenished on a regular basis. Nor is this process confined to municipal courts for, given the preference of foreign investors for the settlement of disputes by international arbitration, there is a long-standing and substantial tradition of judicial lawmaking on foreign investment issues at the international level. In practical terms, this suggests that advisers from both Governments and the private sector need to garner information regularly on the latest judicial trends and practices, both nationally and internationally, if they wish to provide comprehensive technical guidance.

7. Bearing these considerations in mind, the Centre therefore eschews the position that legal information can readily be obtained from single sources that purport to cover the whole field of foreign investment. For the effective negotiation of investment agreements and related arrangements, it is in the interest of all parties not only to be au fait with respect to the details to be included in the particular contract concerned but also to familiarize themselves with the whole range of ancillary sources of legal information that have direct as well as indirect bearing on investment in particular host countries.

8. While access to information is a crucial factor for both parties involved in a negotiation, evidence shows that in negotiations between developing countries and transnational corporations there is often an imbalance in favour of transnational corporations.

9. In evaluating potential investments in developing countries, transnational corporations have access to a wide range of information generated by home-government agencies, trade associations, commercial publishers, private consultancy corporations and business and academic journals. For a given country, such information includes reports on the investment climate, risk assessments and industry and trade reports. Large corporations also possess highly sophisticated in-house information systems that provide on-the-spot accessibility to a wide variety of legal information.

10. Developing countries, on the other hand, have little access to the same kind of information. More particularly, they frequently lack all the legal information necessary for the proper evaluation of contractual arrangements. Many developing countries are not aware of the international sources of information and data,

whether those sources are international institutions or are found in the public and private sectors of other countries. On the other hand, for many countries that may be aware of such sources, the cost of collecting information providing the required degree of detail is often prohibitive. The problem is further compounded in so far as systematic exchange of information between developing countries on policies and contractual arrangements is not common, even when that information may not be of a confidential nature.

11. It has therefore required considerable international effort, which is likely to remain essential for some time, to supplement national capabilities for collection and utilization of the legal information necessary to enable developing countries both to negotiate equitable arrangements with transnational corporations and to formulate policy and legislation in full knowledge and appreciation of the experience of other countries in similar situations. The United Nations Centre on Transnational Corporations continues to play a role in this effort.

12. Of course, the Centre's work in this area is only part of the overall effort by the United Nations to satisfy at least some of the information needs of its States Members. In keeping with its mandate, the Centre naturally concentrates on the acquisition and dissemination of information on transnational corporations and on matters pertaining to foreign direct investment. As has already been emphasized, however, legal information relevant even to discrete investment projects should not be viewed in narrow terms; consequently, the Centre provides information on a variety of matters that, while not related solely to transnational investment, fall within this sphere of activity. The Centre's approach suggests that, with regard to matters such as labour and environmental laws and regulations, there may be some degree of overlap between the collections held by the Centre and those belonging to other agencies, for example, the International Labour Organization (ILO) and the United Nations Environment Programme (UNEP). To a certain extent this is inevitable since it would be both artificially restrictive and rather cumbersome for each agency to delineate sharply with respect to its specific concerns. At the same time, however, because it is generally agreed that duplication of effort within the United Nations system should be kept to a minimum, the Centre is sensitive to the need to coordinate its work with other agencies and remains mindful of the fact that foreign investment matters must constitute the focal point of its legal information system.

II. THE CENTRE'S LEGAL INFORMATION SERVICES

13. The establishment of the Centre's comprehensive information system was intended, inter alia, to strengthen the negotiating capacity of host countries, particularly developing countries, in their transactions with transnational corporations. The kind of information required of the Centre is obviously determined by the issues in any particular field with which Governments are or need to be concerned. However, past experience indicates that a sizeable proportion of that information will be legal information. This is reflected in the Centre's technical assistance activities, a large number of which involve the provision of legal advice in the formulation, drafting and revising of legislation or regulations concerning transnational corporations and in the negotiation or

renegotiation of various contractual arrangements entered into with transnational corporations.

14. Legal information is provided by the Centre to Member States in various forms: (a) documentation from the Centre's extensive collection of legal material related to foreign investment and transnational corporations, including publications, investment-related legislation and model contracts of various countries, as well as contracts already entered into between transnational corporations and certain Member States; (b) and information basically of a research and evaluative nature, involving the analysis of various laws, regulations, contracts and agreements.

15. The volume of legal information requested of and provided by the Centre in turn reflects the growing importance of three major components of the Centre's comprehensive information system. These are the laws and regulations component, the contracts and agreements component and analytical studies.

A. The laws and regulations component of the information system

16. The laws and regulations component of the Centre's information system comprises three main elements:

(a) A publication, which the Centre continues to update, describing national and regional legislation and regulations enacted for the purpose of regulating the operational activities of transnational corporations. Volume VIII of the publication, entitled National Legislation and Regulations Relating to Transnational Corporations, will be issued this year;

(b) A list, which the Centre is continuing to develop, of legislation related to foreign direct investment. The list will be ready for publication this year as part of the directory on foreign direct investment and transnational corporations;

(c) A collection, which the Centre continues to expand, of copies of laws and regulations related to the activities of transnational corporations.

17. The laws and regulations component of the information system has the following main purposes:

(a) To facilitate the Centre's systematic collection of information related to the national and international legal framework within which transnational corporations operate. The collection enables the Centre to develop a current, comprehensive and comparative database of national laws, regulations and policies affecting transnational corporations as well as of regional and international arrangements affecting the operations of transnational corporations;

(b) To facilitate the Centre's advisory services and technical assistance to developing host countries that wish to institute key changes in their national legislation concerning foreign investment and operations of transnational corporations. By continuously updating its collection of laws and regulations, the

Centre is able to respond to specific requests promptly and with detailed information on the legal mechanisms related to activities of transnational corporations adopted by other countries;

(c) To provide information on this subject to users besides the Centre and Governments, including transnational corporations, educational and research organizations, public interest groups and other international organizations.

18. It should be noted that a number of constraints impose limitations upon the development of this component of the Centre's information system. These constraints and limitations arise from essentially two sources: the vastness and complexity of the subject-matter; and time, staffing and budget limitations on the resources of the Centre.

19. There is obvious difficulty in deciding, in fact, which laws and legal issues have significance for host country regulation of transnational corporations. Since these laws and their administration often do not apply only to transnational corporations, a legal expert familiar with the host country's legal system is needed to analyse them properly. In fact, as was implicit in our earlier comments on the relevant sources of legal information, nearly all the national laws of a given country may have some bearing on the operations of transnational corporations.

20. However, by limiting the scope of legal issues to be included in the system, it is possible to devote the proper degree of analysis to the national laws, regulations, decrees and policies, as well as to the treaties and international agreements, that relate to the particular legal issues being studied.

21. For example, in developing a list of legislation related to foreign direct investment, the Centre has limited itself to the following:

(a) Laws and regulations specifically dealing with foreign direct investment in any sector or industry;

(b) Company law, including accounting and reporting regulations;

(c) Taxation law;

(d) Transfer of technology law;

(e) Industrial/intellectual property law;

(f) Labour relations and employment law;

(g) Relevant aspects of environmental law.

22. A related problem lies in the availability of information. The relevant laws and regulations may be scattered throughout the host country's entire legal system. Furthermore, although many countries publish official gazettes that report changes in their legal regime, it is often quite difficult to obtain reports of decrees and policies in a regular and timely fashion, especially in those

developing nations where information-processing systems are not highly developed. In any event, a good deal of time and staffing are required for monitoring revisions of the information.

23. Although its initial collection of laws and regulations concentrated on the legal framework of host countries, the Centre is now giving serious consideration to expanding its collection of laws, regulations and policies of home-country Governments. Home-country regulation of transnational corporations may have an impact on corrupt practices, taxation, capital flows, disclosure of information, restrictive business practices and other issues and may thereby give rise to conflicts with the legal regimes of host countries.

B. The contracts component of the information system

24. The Centre continues to expand its collection of contracts and agreements between transnational corporations and host entities. The contracts collection is a major tool of the Centre in its provision of advisory and information services. Among the most important purposes, objectives and uses of the contracts component of the information system are the following:

(a) To enable host country negotiators to strengthen their position vis-à-vis transnational corporations by providing them with extensive detailed information about different classes of contracts and specific contractual provisions between transnational corporations and host countries;

(b) To provide a database for research related to agreements between transnational corporations and host countries;

(c) To provide information to other users, including transnational corporations and to promote a better understanding of the development and contracting policies of host countries.

25. The Centre has noted in previous documents that business confidentiality is a major obstacle to the development of a comprehensive information system for contracts between transnational corporations and host country entities. The following reasons are frequently given to explain why transnational corporations may desire to maintain the secrecy of their contracts:

(a) Contracts may contain proprietary information related, for example, to technology;

(b) Access to contracts may aid competitors;

(c) A comparison of contracts may reveal different terms for different parties, especially when specific provisions are viewed in isolation.

26. A few of the same reasons explain why host countries are sometimes also unwilling to make transnational contracts available for examination and dissemination. Reasons for a host country's desire to maintain the confidentiality of its contracts and agreements include the following:

(a) The host country may wish to maintain or develop a competitive advantage over neighboring States or other States with which it is often competing for the limited financial, technological and related resources needed to design and implement development projects;

(b) Contracts may relate to national security matters;

(c) The contents of a contract may reveal more about a country's economic strengths and weaknesses than the Government would like to reveal either to the public or to transnational corporations with which it may later find itself negotiating;

(d) The contracts and agreements may not be entirely consistent with national investment legislation or policy.

27. The constraints placed upon Governments in making contracts available sometimes extend beyond the question of confidentiality. In some countries, national legislation and regulations prohibit the disclosure of contracts entered into by the Government. It should be noted, however, that not all Governments have adopted an identical or even similar approach to the availability of those contracts into which they enter. In many countries it is standard practice not to classify as confidential contracts between the Government and private parties. In such countries, contracts are subject to approval by the appropriate branch of the Government, the legislature, for example, or the executive branch, and, as part of this approval process, the contract is published in the official gazette of the country concerned.

28. Thus, restrictions on the availability of contracts - imposed either formally, by the dictates of national legislation and regulations, or informally, through the desire for governmental or business confidentiality - impose, in turn, a limitation on the contracts component of the information system of the Centre. However, despite the apparent difficulties created by such constraints, the Centre has managed to continue expanding its very sizeable collection of contracts, largely because the users of the Centre's information system, who happen to be also the suppliers of a large number of contracts, have come to recognize that the Centre, when supplying legal information is always sensitive to the matter of confidentiality.

29. Legal materials from the Centre's collection of contracts can be supplied to user Governments in three different forms:

(a) The complete text of a contract that is no longer in force or has been published by the parties thereto or is otherwise in the public domain;

(b) The text of a sanitized contract, that is, a text with the names of all parties to the contract removed and sometimes with other omissions;

(c) The abstract of a contract, that is, a brief description of its essential features, in the not unlikely event that the parties to that contract should object to publicizing its full text, whether sanitized or not.

30. It must be emphasized that simply providing a host country negotiator with several clauses that were employed in other contracts or with a profile of another contract will have a limited, sometimes a negative, effect upon the negotiating ability of that host country negotiator, since the economic, financial and legal circumstances under which negotiations are conducted vary widely from investment to investment. The Centre also takes the view that individual contracts can be misconstrued when not viewed in their overall economic context; for this reason, the provision of legal information is usually undertaken as part of an overall advisory project.

C. Analytical studies

31. Finally, analytical studies constitute a vital part of the Centre's legal information resources. Over the years, the Centre's studies on the activities of transnational corporations and on the various aspects of their relations with Governments have included analyses of policy and legal issues as well as of contractual practice. There have also been a large number of specialized studies of prevailing practices in particular industries, countries or samples of countries, and regions, including analyses of policy, legal and contractual issues.

32. The most prominent among these studies is the series of global surveys entitled Transnational Corporations in World Development, which has always included a major legal component. More specialized studies have covered such subjects as joint ventures, alternative forms of mining and petroleum development, licensing agreements, engineering and technical consultancy agreements, bilateral treaties, the code of conduct and international law issues, as well as a large variety of other topics. The Centre's Current Studies and Advisory Studies series have also covered a wide range of specialized subjects of an economic, industrial and legal nature. A list of some of the Centre's studies dealing with subjects of a legal nature is contained in the annex to this report.

33. The Centre continues to add to this body of legal information, which not only has proved useful to Governments for policy-making, legislative and negotiating purposes, but also has become a universally recognized source of scholarship on transnational corporations.

III. THE CENTRE'S WORK: A BRIEF ASSESSMENT

34. In keeping with the conclusions specified in an evaluation of the work of the Centre (E/AC.51/98/Add.1) prepared in 1979, emphasis has been placed on collecting laws, regulations and contracts on transnational activity that may be useful to Governments and their agencies. From all indications, this conforms with the needs and requests of individual countries. In the absence of a comprehensive impact study however, it is difficult to reach definitive conclusions on the overall efficacy of the Centre's programme in the area of legal information. Nevertheless, all the available evidence strongly suggests that developing countries, as a group, presently attach considerable importance to this aspect of the Centre's work. To begin with, it is evident that Member States and other parties have been using the

legal information services of the Centre with increasing frequency. In 1990, for instance, requests for information on laws, regulations and agreements totalled nearly 350, up from 300 in 1989; of these, requests for information on laws and regulations predominated in 1990, with approximately two thirds of the inquiries received falling into this category. While the majority of requests come directly from government departments, other entities such as research institutions, universities and non-governmental organizations also make frequent use of the Centre's information base. Overall, therefore, the actual number of requests received, the fact that this number has steadily increased and the diversity of the recipients of the Centre's assistance in this area underline the usefulness of the service that the Centre has been providing.

35. In assessing the efficacy of the Centre's work, it should also be noted that, as a matter of policy, the Centre seeks to adhere essentially to the terms of the request submitted by Governments or other agencies. The rationale for this policy lies in the view that the recipient's own perception of its information needs should be paramount. In practical terms, however, this means that the Centre's overall usefulness is partly determined by the way in which requesters of information choose to rely on the Centre. None the less, there remains ample scope for the view that the Centre's efficacy is not circumscribed by this approach. That view is borne out by brief reference to the Centre's practice in actual cases.

36. Just prior to negotiating a petroleum exploration contract with certain transnational corporations, the Government of Argentina requested the Centre to provide it with alternative clauses in petroleum contracts related to the applicable law, the settlement of disputes and the responsibility for modification, nullification and termination of contracts. The Government then made its own evaluation of the information provided and, on that basis, determined the formulation that would be most appropriate for its own circumstances. In much the same manner, the Government of Brazil, upon receiving information from the Centre on the mining taxation legislation of several mineral-exporting countries, was able to evaluate its own legislation in the light of prevailing international practices. In yet another case, information provided by the Centre at a seminar on joint ventures organized in Moscow in 1989 led to revisions of Soviet regulations on joint ventures. In all such cases, it may well be that information transmitted by the Centre is used at an initial stage in the process of policy formulation, but the information is none the less an integral part of that process.

37. In other instances, the legal information requests submitted by Governments are couched in terms that envisage that advisory assistance will be provided along with the information sought. In these instances, the Centre's work will include an analytical component and, where appropriate, a recommendation of the best options for the Government to pursue. For example, in the course of 1990, the Centre assisted the Government of Fiji in assessing competing bids for a proposed copper project in that country. An important part of the assessment included compilation of information on the transnational corporations involved and on the laws and regulations prevailing in the home States of these corporations. The Centre was therefore able to provide the Government with a wide-ranging analysis; and, on the basis of responses from the relevant department, the information and analysis provided were revealed to be influential components in the Government's decision-making process.

38. Still another index of the usefulness of the Centre's information service may be distilled from the practice of Governments in this area. In a number of cases, in particular, the provision of legal information by the Centre has resulted in requests for advisory services. This class of cases is analytically distinct from those in which the initial request for information is coupled with an advisory component, for in these cases the request for advisory assistance follows the request for information. For example, a request by Mongolia for legal materials related to petroleum exploration has resulted in an ongoing advisory project through which the Centre is providing the Government with direct assistance during its actual negotiations with transnational corporations. Similarly, the Government of Cameroon, having originally requested information on mining legislation from various countries, has now sought the assistance of the Centre in drafting a new mining code. It is fair to assume that such follow-up activities have been prompted not only by the Centre's rapid response to the initial request for legal information, but also by its comprehensive approach to the initial inquiry.

39. Finally, in some cases the provision of legal information is integrally connected with advisory projects undertaken by the Centre. For instance, during negotiations involving advisers from the Centre in such countries as Papua New Guinea, Sierra Leone and Uganda, government negotiators sought information on legal prescriptions and approaches taken in different countries with regard to particular points. Likewise, in the course of providing assistance to the Government of Namibia in the drafting of a comprehensive foreign investment code, the Centre was asked to provide detailed information on various forms of dispute settlement and different models of arbitral rules and procedures. Whenever possible, the Centre is willing to comply with requests for both information and advisory assistance; these components of the Centre's technical assistance programme are of equal importance and will continue to be given the attention they deserve.

IV. IMPROVING THE CENTRE'S LEGAL INFORMATION SERVICES

A. Creating computer-based indexes of the contracts collection

40. The Centre has been requested on a number of occasions to provide information about current contractual terms and conditions in a given sector. The Centre's large contracts collection is an invaluable source of information about current terms and conditions in different sectors. However, the material is to some degree underutilized because the needed information is to a certain extent inaccessible. In order to make use of these contracts as a tool in negotiation, one needs to know where particular provisions in the contracts are to be found.

41. There is a need, therefore, for a computer-based comprehensive index, comprising references to contracts in the Centre's collection, to particular provisions in those contracts, to bibliographical material and, when they are accessible and relevant, to arbitration and other case law. As a start, the Centre is creating such a computer-based index for the collection of petroleum agreements, which is the largest collection of agreements on a sector basis that the Centre possesses.

42. The Centre's computer-based index for petroleum contracts starts with a very general classification of the material into certain broad categories, for example, name of the parties - country and company; type of arrangement, such as concession or production sharing; and geographical region. The subject-matter of petroleum contracts is then broken down into particular topics, for example, provisions relating to work programmes, force majeure and arbitration, which are usually dealt with in separate articles.

43. Once the index was designed, the next step was to examine the Centre's collection agreement by agreement in the context of the various categories established and to assign references to those categories. The results were then entered in a computer database. Thus, if a Government requests information on a particular type of provision, the Centre can promptly refer to hundreds of contracts simply by retrieving information stored under the relevant category from the computer database.

44. This is of course an ongoing project since the contract material is being continuously updated. The Centre also intends to expand this project to cover all other types of contracts in its collection.

B. Developing national legal information systems

45. Available information, however great the quantity, will be of little benefit to host countries unless they are in a position to make full use of it for those purposes for which has been obtained. It would appear that in many developing countries the administrative machinery is far too diffused, weak and inadequate either to obtain or fully utilize the required information. Consequently, the Centre now considers it crucial to complement its legal information services by assisting developing countries in developing their own national legal information systems.

46. A pilot project for a legal information database system for financial agreements within a West African country's Ministry of Finance provides an example of the assistance mentioned above. The project, whose aim is to assist the Government in its recording and retrieval of data related to the contractual provisions of financial agreements, is designed to develop institutional machinery for the evaluation, monitoring and drafting of financial agreements and to thus enhance the Government's negotiating capabilities with transnational corporations.

47. For this West African country, as for many other developing countries, the debt crisis has heightened awareness of the need for better information upon which to base debt management decisions. One important response to this need has been the development of several computer-based debt management systems. Traditionally, the term "debt management information systems" has referred to systems supporting accounting and statistical functions in the area of monitoring financial flows. The United Nations Conference on Trade and Development (UNCTAD), the World Bank, the Commonwealth Secretariat and some private institutions have developed computer-based debt management systems to record, process, manage and report on debt-related data. However, there is a need for technical assistance in the areas

of collecting, storing, and analysing financial agreements and of sharing this information and experience with developing countries. Database systems could be designed to concentrate solely on contractual arrangements in order to provide technical assistance in the negotiation of financial agreements.

48. In many developing countries, much of the information needed for the negotiation of financial agreements is either scattered and duplicated throughout the various files of different ministries and agencies or personally retained by various officials. It is generally not organized as a coherent information system that can permit easy access among a variety of users. In some cases, much of the information that would be highly pertinent, although it may be available in some of the ministries, never reaches the officials in charge of negotiations. Through a well-established database system, government officials can be trained to organize, store and retrieve data collected on financial arrangements.

49. The completion of the Centre's project should result in an organized collection of financial agreements stored within a computerized database system for easy retrieval. The database will provide the texts of original loan and rescheduling agreements covering both financial and legal elements.

50. The Centre's Information Services Branch will install the computer hardware and software systems. A mission team from the Centre will work with government officials in order to determine precise information needs, the data and input available and the legislation and agreements required as output, as well as staff capabilities.

V. CONCLUSIONS

51. The Centre has continued to respond to requests from Governments for legal information related to negotiations with transnational corporations. The Centre also facilitates, on a reciprocal and confidential basis, information-sharing among developing countries.

52. The Centre has, on a number of occasions, also been a source of information for transnational corporations on the legal and regulatory framework for foreign direct investment in developing countries. Educational and research organizations and other international organizations have also benefited from its collection of legal information.

53. The Centre has continued to respond to requests from government institutions for assistance in developing and refining national information systems on transnational corporations. Since developing countries are increasingly conscious of the need for computer-based databases for legal information, the Centre continues to assist those countries in the design, creation and operation of such information systems.

54. The increasing demand for the Centre's legal information services has necessitated various improvements and refinements of those services. Thus, the Centre continues to develop computer-based indexing and retrieval systems for the

various components of its legal information material. However, limitations on the Centre's staffing and budgetary resources have imposed certain restrictions on the range of legal information services that the Centre can provide.

Annex

SELECTED LIST OF UNITED NATIONS PUBLICATIONS CONCERNING LEGAL ISSUES RELATED TO TRANSNATIONAL CORPORATIONS

1. Negotiating International Hotel Chain Management Agreements: A Primer for Hotel Owners in Developing Countries
2. The New Code Environment
3. Key concepts in International Investment Arrangements and Their Relevance to Negotiations on International Transactions in Services
4. License Agreements in Developing Countries: An Analysis of Key Provisions
5. Technology Acquisition under Alternative Arrangements with Transnational Corporations: Selected Industrial Case Studies in Thailand
6. Financial and Fiscal Aspects of Petroleum Exploitation
7. Arrangements Between Joint Venture Partners in Developing Countries
8. Natural Gas Clauses in Petroleum Arrangements
9. Analysis of Engineering and Technical Assistance Consultancy Contracts
10. Analysis of Equipment Leasing Contracts
11. Issues in Negotiating International Loan Agreements with Transnational Banks
12. Transnational Corporations and Contractual Relations in the World Uranium Industry: A Technical Paper
13. Features and Issues in Turnkey Contracts in Developing Countries: A Technical Paper
14. Main Features and Trends in Petroleum and Mining Agreements
15. Management Contracts in Developing Countries: An Analysis of Their Substantive Provisions
16. Alternative Arrangements for Petroleum Development
17. International Debt Restructuring: Substantive Issues and Techniques
18. International Income Taxation and Developing Countries
19. Bilateral Investment Treaties

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ACTIVITIES OF THE UNITED NATIONS CENTRE ON TRANSNATIONAL CORPORATIONS

STRENGTHENING THE NEGOTIATING CAPACITY OF DEVELOPING COUNTRIES IN THEIR DEALINGS WITH TRANSNATIONAL CORPORATIONS

ONGOING AND FUTURE RESEARCH

COMPREHENSIVE INFORMATION SYSTEM

Activities of the United Nations Centre on Transnational Corporations and the activities of the joint units established with the regional commissions**

Report of the Secretary-General

SUMMARY

The present report provides an account of the activities of the United Nations Centre on Transnational Corporations and the joint units established with the regional commissions since the sixteenth session of the Commission.

* E/C.10/1991/1.

** This report incorporates information on the Centre's programme of technical co-operation.

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INTRODUCTION

1. At its sixteenth session, the Commission on Transnational Corporations requested the Secretary-General to submit to it at its seventeenth session a report on the activities of the United Nations Centre on Transnational Corporations and the activities of the joint units established with the regional commissions. 1/

I. EXECUTIVE DIRECTION AND MANAGEMENT

A. Planning and coordination

2. In 1990, the scope of the United Nations programme on transnational corporations, as defined by resolutions and decisions of intergovernmental bodies, continued to expand. At its second regular session, the Economic and Social Council adopted two resolutions: 1990/70 on the activities of transnational corporations in South Africa and 1990/71 on the activities of the United Nations Centre on Transnational Corporations. These resolutions entrusted the Centre with a continuation and expansion of work in several major areas, including the promotion of a larger flow of foreign direct investment in the developing countries; the interrelationship of investment, trade and development; transnational corporations and the environment; the promotion of regional economic integration and cooperation among developing countries; support for the activities of small and medium-sized enterprises in developing countries; further study of "debt-equity swaps"; the preparation of country-specific studies on the contribution of foreign direct investment to development with a view to analysing and stimulating the flow in investment capital, technology and skills to host developing countries; the role of transnational corporations in banking and non-banking services; the development of international standards of accounting and reporting; and the activities of transnational corporations in South Africa. In 1988, the Council adopted three resolutions; and in 1989, eight substantive resolutions entrusted the Centre with an array of elaborated mandates and specific tasks relating to a number of areas of investment and development that were central to the international policy agenda in the 1980s and have continued to be issues of crucial importance for the 1990s. The proposed medium-term plan for the period 1992-1997, which was adopted by the General Assembly at its forty-fifth session in resolution 45/253, specified in its programme 23 the objectives and course of action of the Secretariat for the 1990s in all matters relating to transnational corporations. The programme considerably broadens and brings up to date the scope of the Centre's normative research, advisory and information activities. In this regard the Secretary-General stated in his report A/45/714 that the Centre was one of the United Nations entities that in recent years had experienced expanding work programmes, in response to growing demands from intergovernmental bodies and Governments, with decreasing or static resources in view of the reduction in the United Nations budget as a whole.

3. The Executive Director of the Centre continued to carry out the programme's management through various supervisory, consultative and coordination tools and mechanisms. The Centre's work programme continued to serve as a key instrument for the implementation and monitoring of the proposed budget and allocation of staff

and financial resources. The work programme was regularly reviewed by the Centre's directors, with the participation of senior officers, and other staff. As in the past, the work programme was made available to concerned organizations and bodies of the United Nations, and its specialized agencies. In order to further improve the planning and implementation of the Centre's technical cooperation programme, the Executive Director instituted a Programme Review Group in 1990. The Group meets on a weekly basis to consider new requests for technical assistance and advisory services and to review the execution of ongoing projects. The work of the Group has proved to be an effective collective management body.

4. While the Economic and Social Council has repeatedly emphasized the role of the Commission and the Centre as the focal points within the United Nations system in all matters relating to transnational corporations, the activities of those corporations, by their nature, affect a multitude of political, social, economic, legal and environmental issues that are dealt with to a varying extent by some other organizations and bodies of the United Nations system. Inter-agency coordination in the field of transnational corporations has, therefore, been an important function of the executive direction. The closest cooperative links have been maintained with the Department of International Economic and Social Affairs, the United Nations Conference on Trade and Development (UNCTAD), the International Labour Organisation (ILO) and the United Nations Environment Programme (UNEP), as well as with the United Nations Conference on Environment and Development. In 1990 and early 1991, cooperation with UNCTAD has focused on the preparation of a study on the interrelationship of investment, trade and development, called for by the Commission at its sixteenth session; a project on trade-related investment measures; a technical paper on the role of non-equity links in exports from developing countries; and a report of the Secretary-General on transnational corporations and external indebtedness. The Centre is also making a contribution to the report of the Secretary-General of UNCTAD to be presented to its eighth session in September 1991. On the basis of a joint policy review carried out by UNCTAD and the Centre, the Secretary-General of the United Nations reported to the General Assembly at its forty-fifth session that the quality and coherence of the inputs that the two secretariats provide to intergovernmental bodies and the services they render to Member States in all areas related to trade and investment would be enhanced by measures that would bring about the closest possible programme integration between them, leading, to a significant extent, to common inputs and services (A/45/714).

5. The Centre has also continued to develop cooperative links with agencies and organizations outside the Secretariat that are working on issues of international investment flows and related matters. In this regard, the preparation of a joint study entitled The Uruguay Round: Services in the World Economy, published in April 1990, provided a valuable opportunity for continuing the cooperation between the Centre and the World Bank. Both institutions are keenly interested in encouraging informed participation in the Uruguay Round negotiations and, more generally, in assisting developing countries in their integration in the world economy. As a follow-up, the Centre and the Bank have together prepared a proposal for providing joint technical assistance to developing countries through a series of subregional and national workshops on trade, labour movement and foreign direct investment in services. The provision of this technical assistance is subject to the availability of extrabudgetary financing. The Centre has maintained working

relations with the General Agreement on Tariffs and Trade (GATT), particularly on matters relating to the Group of Negotiations on Services (GNS). The Centre organized a workshop for GNS negotiators in November 1989 which was attended by senior GATT officials. The workshop's papers, which were made available to the Group, were issued in 1990 as a United Nations sales publication entitled Transnational Corporations, Services and the Uruguay Round. 2/ The Commission of European Communities hosted in July 1990 a seminar on phase II of the Centre's project on transnational corporations and the single European Market. Over recent years, the Centre has also developed fruitful working relations with the Japanese External Trade Organization (JETRO).

6. In the area of accounting and reporting, the Centre continued to cooperate with standard-setting bodies such as the International Accounting Standards Committee, the International Federation of Accountants, the Working Group on Accounting of the Organisation for Economic Co-operation and Development (OECD), the Fifteenth Directorate of the Commission of European Communities, and the International Asset Valuation Standards Committee as well as a number of regional organizations. In addition, the Centre contacted over 200 national accounting bodies to inform them of the latest activities of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting. Many of those organizations responded that their countries could benefit if their Governments participated directly in the work of this intergovernmental group. The Centre, in cooperation with the ILO and the World Bank, completed an analysis of accounting needs in 37 countries of Africa. The survey revealed that the lack of fully qualified accountants made it almost impossible to account for and report on the financial position and performance of public and private enterprises. The results of the project are likely to lead to joint technical cooperation activity of the Centre with the ILO and the Bank in this area. With regard to foreign direct investment statistics, the Centre has participated in the meetings of the Group of Financial Statistics of OECD and has held informal consultations with the Capital Flows Team of the International Monetary Fund (IMF). Both groups and the Centre have been making efforts to improve the quality and availability of foreign-direct-investment statistics. These include the drafting a methodological papers and providing technical assistance to countries in the process of improving their definitions, data collection and data retrieval.

7. In 1990, the Centre expanded and strengthened its cooperative links with the main regional and international agencies providing technical assistance to developing countries. This cooperation involved joint project planning and assessment of technical assistance needs, exchange of information on experts and joint evaluation of the results of specific advisory activities. The Centre's main partners in technical cooperation activities included the United Nations Industrial Development Organization (UNIDO), UNCTAD, the World Bank and IMF, the Food and Agriculture Organization of the United Nations (FAO), the Association of South-East Asian Nations (ASEAN), particularly its Committee on Finance and Banking, the ANDEAN Pact, the International Development Law Institute, the Commonwealth Secretariat, the Caribbean States, the Preferential Trade Area for Eastern and Southern African States (PTA) and the Economic Community of West African States (ECOWAS).

8. The Centre continued to strengthen its ties with the academic community world wide. The Centre exchanges its materials regularly with most leading academic institutions undertaking research on foreign direct investment and the operations of transnational corporations.

B. Resources

9. The resources for the implementation of the programme on transnational corporations are made available from the allocations of the regular budget and extrabudgetary funds provided by donor States. The regular budget allocations for the biennium 1990-1991 reflect the post reductions effected in pursuance of the Secretary-General's decisions on staffing cuts. The Centre's staffing base was further stretched by an expanding work programme arising from the growing interest of member States in issues of transnationalization and from various national and international efforts to enhance the contribution of transnational corporations to the process of development. In order to ensure the efficiency of management of the Centre's activities and to compensate for the loss of a D-2 post, the position of Deputy Executive Director was introduced. The Centre also recognizes the importance of new computer technologies in increasing the efficiency of performance while coping with reduced staff. During the reporting period, the number of personal computers further expanded, bringing the ratio of personal computers per staff member to among the highest in the Secretariat. In 1991, the computer availability will be further improved by expanding the local area network. The Secretary-General's report on the status of technological innovations in the United Nations states that "the technologies, programmes and products developed by the Centre and made available to Member States contribute to realizing economies and increasing effectiveness at the national as well as at the international level" (A/45/478). The Centre's capacity to meet the objectives of the Organization's medium-term plan for the period 1992-1997, as contained in its programme 23, will depend considerably on the recognition by member States of the significant changes which have occurred in the 1980s in the international economic environment and the ever increasing and diversifying role of transnational corporations in the world economy and their multifaceted political, economic and social impacts. The consideration of the proposed budget for the period 1992-1993 will be a test of the programme's approval and support.

10. Extrabudgetary resources continued to be critical for the provision by the Centre of advisory and information services, as well as the execution of specific analytical projects. The Centre greatly appreciates the financial support of the Governments of China, Denmark, Finland, France, Malaysia, Norway, Sweden, Switzerland and Zaire. The Governments of Sweden and the Netherlands, and the Rockefeller Foundation, provided special financing for the implementation of the Centre's activities on transnational corporations and the environment. The Centre is also grateful to the Governments of Denmark, France, Germany,* Italy, and the

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* Through accession of the German Democratic Republic to the Federal Republic of Germany with effect from 3 October 1990, the two German States have united to form one sovereign State. As from the date of unification, the Federal Republic of Germany acts in the United Nations under the designation of "Germany".

Netherlands for the sponsorship of associate experts in the Centre and its joint units with the regional commissions.

C. Expert advisers

11. The expert advisers to the Commission continued to contribute to the implementation of the programme on transnational corporations, both in terms of guidance on the main work areas and intellectual contributions to specific projects. Expert advisers made valuable inputs to furthering the understanding of the code of conduct on transnational corporations through written and oral interventions at various international and national forums of business and labour organizations. A special meeting of expert advisers in New York during the period of the sixteenth session of the Commission contributed to the conceptualization of the Fifth Survey on Transnational Corporations in World Development, the major quinquennial study of the Centre.

D. Internship programme

12. Throughout the reporting period, the Centre offered internships to graduate students from both the United Nations Department of Public Information and Ad Hoc Internship Programmes. Approximately 60 students, coming from Brazil, Colombia, France, Germany,* Greece, India, Italy, Japan, Malaysia, Mali, the Netherlands, Norway, Sweden, Thailand and the United States of America, with legal, business or economics backgrounds, served unpaid internships of two to six months while gaining sights into the work of the Organization and the Centre in particular, the interns were able to contribute to the work programme of the Centre.

E. Implementation of the publication programme

13. The Centre issued 21 sales publications in 1990. Out of these, 10 were issued in the Centre's Current Studies and in the Advisory Series and included such subjects as The Role of Free Economic Zones in the USSR and Eastern Europe, 3/ The New Code Environment, 4/ the handbook on Negotiating International Hotel Chain Management Agreements 5/ and Curricula for Accounting Education for East-West Joint Ventures in Centrally Planned Economies. 6/

14. The Centre realized the importance of issuing publications of the highest quality and the potential of new computer technologies in this regard, and took the step of creating the new position of desk-top publisher. All publications are now sent to print in professional looking camera-ready format.

15. In early 1990, the Office for Political and General Assembly Affairs and Secretariat Services informed the Centre that it would no longer be able to edit the Centre's sales publications owing to staffing cuts. This placed the Centre in the position of having to allot an increasing amount of its financial resources to having its sales publications edited externally.

16. The CTC Reporter continued to maintain its reputation as an established international review with the prime focus on the political economy of transnational corporations. During the reporting period two issues of the magazine were published: No. 29 (spring 1990) and No. 30 (autumn 1990). The Centre plans to increase the share of analytical articles, in addition to information on the Centre's ongoing and future research and advisory work.

17. The Centre's newsletter, Transnationals, provides, on a quarterly basis, a variety of information on most significant international developments in the area of foreign investment and the Centre's recently published or about to be published technical papers. Four issues of the newsletter were issued in 1990. Articles covered the gamut of the Centre's work ranging from pieces on contract renegotiation in Sierra Leone, to "debt-equity swaps" in Latin America and action on the code of conduct. Numerous requests were received from new subscribers, and the newsletter was well received by academia and the business community throughout the world.

F. Dissemination of information and outreach activity

18. During the reporting period, the Centre continued efforts to disseminate information on its work to its many constituencies. Many new initiatives were undertaken.

19. On 15-16 September 1990, the Centre organized an intensive briefing seminar for Second Committee delegates entitled "The Role of Transnational Corporations in the World Economy", with a grant from the Friedrich Ebert Foundation, New York/Bonn. The two-day retreat, held at Princeton, New Jersey, apprised Second Committee delegates of transnational corporations bearing upon major international economic issues. A distinguished group of experts in the areas of foreign direct investment trade and international finance participated as speakers. Lectures and discussions addressed a wide variety of issues, ranging from the legal and regulatory, to trade in services, new technologies, third world debt and the environment. An underlying theme throughout the seminar was how and to what extent foreign direct investment and tie-ups with transnational corporations could be made to contribute to national development goals and what could be possible strategies for a best approach in national policy-making or international negotiations. The 26 participants represented a mix of developing, developed and Central and Eastern European countries; their response to the seminar was inspiring. On the basis of their evaluations, the Centre is considering a series of similar briefing retreats, including specialized briefings on transnational corporations in areas of topical interest, such as the environment, if funding can be secured.

20. The Centre maintained close working relations with the Sales Section of the Department of Conference Services, participating actively in a newly formed Selection Committee which seeks to involve author departments in the process of increasing sales of publications.

21. In this context, the Centre continued to receive reader evaluations of its studies in response to the questionnaire included at the back of its sales publications. The majority of responses assessed the publications favourably.

22. Several bibliographies were produced and disseminated. The Centre updated its bibliography of sales publications and its list of publications on services and transborder data flows and issued a booklet on the Centre's work. Publications on Central and Eastern Europe were printed.

23. The Centre was active in disseminating information on its advisory services. In 1990, a 24-page brochure on the Centre's technical co-operation programme was produced in English and French, while a translation into Spanish is under way. The brochure details the scope of assistance that the Centre offers to developing countries and provides concrete examples.

24. In 1990, the Centre's staff gave, as in the past, ad hoc briefings on its work to numerous visiting groups.

G. Ad hoc expert meetings

25. In 1990 seven meetings of ad hoc expert groups were held. Experts discussed possible research strategies on new firms for the East-West Business Directory, issues of accounting for joint ventures and the transfer of environmentally sound technologies to developing countries, and alternative conceptual approaches in the work of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting. Besides, the legal counsel of a major transnational corporation briefed the Centre's staff on recent developments in corporate strategies as they relate to foreign direct investment.

II. SECURING AN EFFECTIVE CODE OF CONDUCT AND OTHER INTERNATIONAL ARRANGEMENTS AND AGREEMENTS RELATING TO TRANSNATIONAL CORPORATIONS

A. Code of conduct

(1990-1991 programme element 1.1)

26. Pursuant to Economic and Social Council resolution 1989/24, the enlarged Bureau of the special session of the Commission on Transnational Corporations, together with the Secretariat, held intensive informal consultations between January and May 1990 in order to determine whether and when formal consultations could be resumed. On the basis of those consultations, a new version of the draft code was prepared by the Chairman of the special session, a draft which the Chairman felt should be acceptable to all groups of countries. The Centre also provided substantive services for the preparation, conduct and follow-up of the special session of the Commission which was reconvened for one day on 24 May 1990 to view the results of the informal consultations and transmit them to the Economic and Social Council. As the Economic and Social Council requested the General Assembly at its forty-fifth session to decide on the best course of action on the code, the Centre intensified its efforts to disseminate the code and raise awareness of the role and objectives of this instrument among non-governmental organizations, academia and other interested groups. It was the initiative of several of those groups that led to a number of activities in individual countries.

27. Pursuant to a decision by the General Assembly to continue intensive consultations on the code with the aim of achieving an early agreement for presentation and adoption at the forty-sixth session of the General Assembly, the Centre will further intensify its activities in this area during the next year.

28. The Centre prepared a report on the progress made in the work on the code of conduct (E/C.10/1991/8), which is submitted to the Commission at its present session. It contains further details on the negotiations on the code and discusses the progress made in the negotiations since the sixteenth session.

B. International standards of accounting and reporting

(1990-1991 programme element 1.2)

29. The Centre prepared the documentation (10 reports) and provided substantive services for the ninth session of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting, held from 5 to 15 March 1991. The report of the Group on that session is contained in document E/C.10/1991/12. The reports deal with the review of important current developments in the field of accounting and reporting at the global and national levels; accounting for and by joint ventures; accounting for environmental protection measures; accounting and reporting during and after the transition from public to private enterprises; the organization of the accountancy profession and the role and qualifications of auditors; the development of a comprehensive information system; and appropriate measures to give effect to the work of the Group, particularly the renewal of the mandate. The Centre is in the process of developing a comprehensive programme of technical co-operation to assist developing countries with standard-setting in the area of accountancy development.

30. Within the framework of Economic and Social Council resolution 1985/71, which seeks to disseminate the results of the work of the Group to all interested parties, the Centre prepared a report entitled International Accounting and Reporting Issues: 1990 Review (ST/CTC/107) and Accountancy Development in Africa: Challenge of the 1990s (ST/CTC/109).

31. A volume entitled Accounting and Reporting for East-West Joint Ventures was published in late 1990 by the Centre jointly with the Lafferty Publication in Atlanta, Georgia, United States of America. It contains a collection of papers written for a workshop organized by the Centre in Moscow in June 1989 which addressed the conflicting East-West accounting issues and suggested solutions to improve reporting. The workshop was a unique effort to bring together Eastern European and international accountants for the first public discussion of problems arising from different accounting practices.

32. The Centre also serviced the meetings of the International Task Force on Improvements in Accounting for Joint Ventures. The main background document was a technical paper entitled Joint Venture Accounting in the USSR: Direction for Change (UNCTC Advisory Studies, Series B, No. 7). 7/ The Task Force is modernizing the chart of accounts of the USSR, using international standards. These will be

applied first to joint ventures and then to State enterprises and cooperatives. The new chart will make it easier to draw up financial statements which meet the needs of many users, including foreign investors. The Task Force will also produce instructions for using the new guide, a glossary and model financial statements. In addition, the Task Force advised the Methodological Council of the Ministry of Finance on a new draft law of accounting concepts. In addition, a three-part training programme has been designed and a part of it is being implemented which will bring Soviet accounting students, professors and practitioners up to date in the new changes in accounting for a market economy. The curriculum for the courses is contained in Curricula for Accounting Education for East-West Joint Ventures in Centrally Planned Economies (Series B, No. 6). 6/ This work has been undertaken with extremely limited human and financial resources. Any further technical assistance will require an infusion of additional resources.

C. International, regional and bilateral arrangements and agreements relating to transnational corporations

(1990-1991 programme element 1.3)

33. The examination and analysis of multilateral, regional and bilateral agreements, and of arrangements relating to transnational corporations, continues to be a major aspect of the Centre's work programme as important developments in various forums unfold with significant implications for transnational business operations. The Centre has been following closely and has consulted with the relevant institutional bodies with respect to the Uruguay Round of Multilateral Trade Negotiations; the reviews of the ILO Tripartite Declaration on Multinational Enterprises and Social Policy; the Set of Multilaterally Agreed Equitable Rules and Principles for the Control of Restrictive Business Practices; and the OECD Declaration on Multinational Enterprises and International Investment. In particular, the interrelations between developments in these forums and the negotiations on the code of conduct and the impact of these activities in the progressive elaboration of international standards for the behaviour and treatment of transnational corporations has been the object of inputs and discussions in connection with various specific activities of the Centre, notably the role of transnational corporations in environmental and consumer protection and disclosure of information.

34. With respect to bilateral treaties, the Centre has continued to maintain an up-to-date inventory of bilateral treaties related to foreign direct investment, as Governments continue to conclude new agreements. A study on the experience with the negotiation of bilateral investment treaties is near completion. The findings of the study are also reflected in the report of the Secretary-General to the present session of the Commission on other international agreements and arrangements relating to transnational corporations (E/C.10/1991/9).

35. General information on multilateral, regional, bilateral and national frameworks for foreign direct investment is also reflected in a major new publication of the Centre, the Handbook on Foreign Direct Investment, which is nearing completion.

III. MINIMIZING THE NEGATIVE EFFECTS OF TRANSNATIONAL CORPORATIONS AND ENHANCING THEIR CONTRIBUTION TO DEVELOPMENT

A. Analysis of general trends in the nature and extent of the operations of transnational corporations

Transnational corporations and international economic relations

(1990-1991 programme element 2.1)

36. To facilitate the Commission's discussions of recent trends concerning transnational corporations and international economic relations, the Centre has prepared a report, "Recent developments related to transnational corporations and international economic relations: the Triad of foreign direct investment" (E/C.10/1990/2), which is before the Commission. The study examines the pattern of foreign direct investment stocks and flows in the "Triad" (the European Community, Japan and the United States), and the extent to which other countries, most of them developing countries, are linked to them through foreign direct investment flows. An effort is made to explain the resulting pattern, by analysing corporate strategies and the interrelationships between foreign direct investment flows on the one side and trade, technology and financial flows on the other. The paper suggests that the growing centrality of foreign direct investment raises anew the issue of governance of the world economy.

37. A study entitled The Determinants of Foreign Direct Investment: A Survey of the Evidence (ST/CTC/79) on the determinants of foreign direct investment, with particular attention to the inflow of foreign direct investment in developing countries, is nearing completion. A fuller comprehension of the factors which prompt transnational corporations to undertake investments abroad and to choose particular locations should be useful to policy makers in designing policies to attract foreign direct investment, where such investment is considered desirable. Based on an extensive survey of literature, the study notes that firm-specific factors (e.g., research-and-development intensity, product differentiation, management and marketing skills etc.) may be more important in a firm's decision whether or not to invest abroad. Locational factors (e.g., size and growth prospects of host country markets, labour costs, proximity to major markets, etc.) and policy regimes (e.g., openness to foreign ownership, investment incentives, efficiency of administrative apparatus) are important in determining where the investment is located. Host countries can do very little about firm-specific factors, but they can adopt measures to improve locational factors and policy regimes. However, improvements in policies are a necessary, but not a sufficient, condition for attracting foreign investment. Hence, the importance of a simultaneous improvement in locational factors in respect of which host country measures need to be supported by international cooperation. The preliminary findings of the study are reflected in document E/C.10/1991/8, which is before the Commission.

38. The Centre submitted a comprehensive report on transnational corporation activities in least developed countries to the Second United Nations Conference on Least Developed Countries, held in Paris in September 1990. The report shows that

recent policy changes in least developed countries clearly reflect a greater interest on their part in an expanded role of transnational corporations. However, a commensurate response from the latter is lacking because of unfavourable economic conditions in those countries. While recognizing that transnational corporations cannot provide a magic cure for the many economic ills afflicting least developed countries, the report recommends that host countries, home countries and international institutions act in a co-ordinated manner to strengthen transnational corporations' contribution to their development. The Conference was addressed by the Centre's Executive Director.

39. The Centre published a paper entitled Foreign Direct Investment, Debt and Home Country Policies (UNCTC Current Studies, Series A, No. 20), 8/ which draws on reports submitted to the sixteenth session of the Commission on recent developments (E/C.10/1990/2), home country incentives for investment in least developed countries (E/C.10/1990/4) and on transnational banks (E/C.10/1990/11). According to the study, recent data confirm past trends with regard to the concentration of investment flows in the developed market economy countries and the relative decline in the shares of developing countries. Among the latter, least developed countries receive a minuscule share of foreign direct investment. The rapid growth in Japanese investment in the United States in recent years has received a great deal of attention. But perhaps the most significant recent development affecting global investment patterns is the emergence of Eastern Europe and the Soviet Union as prospective areas for foreign direct investment. These and other related trends are examined. One disturbing feature of the investment scene in developing countries is the great imbalance between foreign equity and foreign debt. The economic austerity imposed by the debt-burden - through depressed demand, diversion of resources into debt servicing, and the difficulties in profit remittance and other external financial transactions - cannot but have a negative effect on the investment climate in those countries. Such austerity also operates as a severe counterweight to the efforts to promote investment flows through the liberalization of regulatory regimes. There thus seems to be no alternative to debt relief - accompanied by liberalized investment regimes - if the relative decline in investment flows to developing countries is to be reversed. Accordingly, recent developments in the treatment of the debt problem and the role of debt-relief programmes in the effort to improve investment conditions in developing countries are analysed. Investment flows to developing countries are also influenced by a range of external factors, prominent among which are home-country policies and the programmes of multilateral institutions. The study examines how these may be oriented towards the encouragement of investment flows to the least developed countries in particular. Another publication, New Issues in the Uruguay Round on Multinational Trade Negotiations (UNCTC Current Studies, Series A, No. 19), 9/ brought together the reports submitted to the sixteenth session of the Commission on trade-related investment measures, trade-related intellectual property rights and services (E/C.10/1990/13 and E/C.10/1990/12, respectively). Those issues are being explored further in the Centre's work in the context of the Uruguay Round of Multinational Trade Negotiations.

40. The impact of regional economic integration on foreign direct investment and implications for developing countries were analysed in Regional Economic Integration and Transnational Corporations in the 1990s: Europe 1992, North

America and the Developing Countries (UNCTC Current Studies, Series A, No. 15). 10/ The study develops a theoretical framework for understanding the activities of transnational corporations in response to regional integration and contains an in-depth analysis of the European Community's programme to unify its regional market by the end of 1992; the 1989 United States-Canada Free Trade Agreement; and five developing-country regional integration schemes in Asia, Latin America and Africa. The study concludes that regional integration among developed countries has not had a major impact on foreign direct investment in developing countries, although some diversion has occurred in the past and may occur in the future, and that developing countries need to strengthen their own efforts to achieve regional economic integration. The Centre is currently examining the anticipated impact of 1992 on investment flows within the European Community, from the Community and to the Community, with special attention being given to implications for developing countries.

41. The Centre has continued its work on non-conventional transnational corporations, an increasingly important dimension within the universe of transnational corporations. A project on transnational corporations based in developing countries examines the impact of foreign direct investment by those firms on their home countries. In the framework of its work on non-conventional transnational corporations, the Centre contributed a paper on "Small and medium enterprises in foreign direct investment" to a volume on technology transfer to developing countries by small and medium-sized enterprises, prepared by the International Development Research Centre and the Centre for Development Research and International Economic Relations (CEDREI). The Centre, with the financial support of the Government of Japan, has also started a project on the role of small and medium-sized transnational corporations in the economic development of developing countries. A technical paper is being prepared which will constitute the principal documentation for technical assistance-oriented workshops in this area. This project involves the creation of a database on small and medium-sized transnational corporations, fieldwork (including questionnaire surveys and interviews) and the preparation of a technical assistance programme. This report is expected to be completed by the end of 1991.

42. The current developments in Central and Eastern Europe have a potential impact on global foreign direct investment flows, including for developing countries. One mechanism through which countries in that region are entering the world market for foreign direct investment is through the establishment of free economic zones. An overview of the issues that arise in the establishment of such zones is contained in The Role of Free Economic Zones in the USSR and Eastern Europe (Current Studies, Series A, No. 14). 3/ A comprehensive analysis is contained in the technical paper entitled The Challenge of Free Economic Zones in Central and Eastern Europe: International Perspectives (ST/CTC/108), which draws on the proceedings of the international conference on that issue which was organized by the Centre (Moscow, September 1989).

43. The Centre also has initiated a project on the developments in Eastern and Central Europe and the USSR and their impact on the global pattern of foreign direct investment and implications for developing countries. The study has been designed to examine the attractiveness of these countries for foreign direct

investment; their potential to divert foreign direct investment from other regions of the world, particularly developing countries; the extent to which Central and Eastern Europe may become an international source of capital outflows; and, finally, policy measures that could be taken to ensure that developing countries are not negatively affected by these developments. The study will assess actual and possible strategies of transnational corporations in the region in light of a variety of foreign direct investment determinants. Through a comparative analysis with developing countries, an effort will be made to assess to what extent investment flows that could have gone to developing countries may in the future go to Central and Eastern Europe. The scope of the project is broader and its complexity greater than initially anticipated, particularly owing to the volatility of the situation in the countries of the region. The implementation of a study, which would allow the suggestion of practical policy recommendations, requires additional resources since the costs of such a study cannot be absorbed within the existing resource allocations. The Centre is exploring funding possibilities through extrabudgetary arrangements.

44. During this year, the Centre will introduce the "TNC Library", a major outreach project which will contribute to the better understanding of the activities, impacts and potentials of transnational corporations throughout the world, particularly in developing countries, by publishing, in 1991-1992, jointly with Routledge Publishers, 20 volumes of selected readings, accompanied by state-of-the art introductions, on all aspects of the activities of transnational corporations.

B. Examination of measures strengthening the negotiating capacity of Governments in their relations with transnational corporations

Analysis of laws, regulations and policies relating to transnational corporations

(1990-1991 programme element 2.4)

45. The Centre finalized volume VIII of the series National Legislation and Regulations Relating to Transnational Corporations (ST/CTC/105), which is expected to be published in 1991. This volume contains analyses of the foreign investment legislation of 20 countries. Furthermore, as part of the preparation of the Handbook on Foreign Direct Investment, the legal framework for transnational corporations in some 100 countries was documented.

46. The Centre has also begun a study on intellectual property rights and foreign direct investment. The study investigates the importance of the protection of intellectual property rights as a determinant for foreign direct investment flows, with particular attention to such advanced technology industries as the computer, pharmaceutical and biotechnology industries. Policy implications for developing countries are derived from the analysis, such as specific measures concerning the creation and enforcement of intellectual property laws which should be undertaken in order to enhance foreign direct investment.

Economic and legal analysis of host country policies

(1990-1991 programme element 2.6)

47. The Centre has completed two studies on investment policies in developing countries entitled "National policies in foreign direct investment flows" (UNCTC Current Studies, Series A, No. 18). One of these, based on multivariant analysis, assesses the impact of overall changes in investment policies on foreign direct investment flows. The study generally finds a weak statistical relationship between the liberalization of policies and the flow of foreign direct investment, though there are some cases in which a strong positive association is observed. It argues that this finding should not be interpreted to mean that liberalization is not productive, but it does imply that liberalization alone is not sufficient to attract investment without accompanying changes in general economic and market conditions. The study also points out that the weak statistical relationship may also be due to the fact that many countries have liberalized their policies during the last decade, with the effect that the relative attractiveness of one vis-à-vis another has not changed much.

48. Another study, undertaken jointly with UNCTAD, entitled "Trade-related investment measures and their impact on trade and development", is being completed. This study finds that trade-related investment measures (TRIMs) tend to be more concentrated in certain manufacturing industries (most often in the automotive, chemical/pharmaceutical and computer/informatics industries) than in other economic sectors; that they are generally more prevalent in developing countries at the legislative or regulatory level, but that their incidence is much higher in developed countries when measured in terms of the volume of investments affected; and that most TRIMs (about 80 per cent) are "redundant" in the sense that the investors concerned would have applied the particular measures anyway - albeit at a different pace than that required by the host country. A closer analysis of the policy implications of the range of findings from the study will provide useful insights for the provision of technical assistance in the design of investment policies and measures.

49. Upon request, the Centre undertook two assessment studies on Bangladesh in line with Economic and Social Council resolution 1990/71, which encouraged the Centre to undertake country-specific studies on the contribution of foreign direct investment to development. One study describes the major provisions of various laws and regulations which deal with foreign direct investment and identifies directions for future improvement. The other study assesses the economic impact of foreign direct investment in Bangladesh and suggests further measures for strengthening its positive impact. Based on a cost-benefit analysis, the study finds that the net social income effect of foreign investment in Bangladesh has been positive. In the light of this finding and taking into account the country's comparative advantage, the study suggests a number of industries in which Bangladesh could promote foreign direct investment. The study also suggests some areas for improvement in policy and their implementation. These concern the remaining restrictions on foreign direct investment, tariff policies, remittances, administrative procedures for decision on investment proposals, quality control etc. These studies should be of great interest to policy makers and potential investors in Bangladesh.

C. Analysis of the political, social, environmental and cultural impact of transnational corporations on host developing countries

1. Activities of transnational corporations in South Africa

(1991-1992 programme element 2.7)

50. The Centre disseminated the findings of the Panel of Eminent Persons, which conducted the second public hearings on the activities of transnational corporations in South Africa and Namibia (held at Geneva, from 4 to 6 September 1989), and published the full proceedings of the hearings in two volumes (ST/CTC/102). The Centre has also updated recent developments in this area in a report before the Commission (E/C.10/1991/10). Disinvestment from South Africa has continued in 1990, at a reduced pace. On other fronts, South Africa's burden of heavy capital outflows, required to repay the foreign debt, has been relieved somewhat both by a rising trade surplus and the 1989 rescheduling agreement. But the economy is currently in recession, and the lack of foreign funds for investment is hurting. In a post-apartheid era, however, the biggest challenge is the lack of a skilled labour force. This report explores the role transnational corporations can play in the training of black South Africans.

51. Pursuant to Economic and Social Council resolution 1990/70, the Centre updated the "List of transnational corporations with interests in South Africa" (E/C.10/1991/11), containing information on transnational corporations that have disposed of their equity interests, the method of disinvestment, non-equity links, inactive subsidiaries or affiliates, corporate interrelations and identification of purchasers, on transnational firms with more than a 10 per cent equity stake in a company or companies in South Africa, on transnational corporations in the process of disposing of their equity holdings, and on transnational firms that have reduced their interests. Industrial sectors are specified in cases when known.

2. Transnational corporations and the environment

(1990-1991 programme element 2.9)

52. In the area of transnational corporations and the environment, the Centre focused on the implementation of section II of Economic and Social Council resolution 1990/71.

53. The Centre prepared a comprehensive analytical study which identifies the ways that the Commission could make an action-oriented contribution to the preparatory work of the United Nations Conference on Environment and Development, that is before the Commission (E/C.10/1990/3). The Centre also undertook to investigate measures that would encourage and mobilize transnational corporations to protect and enhance the environment in its relation to development, by initiating a study which seeks to shed light on alternative means of transferring environmentally sound technologies to developing countries on favourable terms. The study examines the role of transnational corporations and the various mechanisms available to them

to increase the transfer of environmentally sound technologies to developing countries. In carrying out this project, the Centre maintains close cooperation with UNEP, UNCTAD, the United Nations Centre for Science and Technology for Development and OECD. In this regard, the Centre has participated and made substantive contributions to the meetings on the transfer of environmentally sound technologies organized by UNEP, the Centre on European Policy and OECD.

54. The Centre is also conducting a survey of the corporate environmental policies, programmes and procedures of about 1,000 transnational corporations. The survey will be used to identify innovative corporate environmental management practices that could contribute to environmentally sound development in developing countries. The survey is made possible through extrabudgetary funds received from the Government of the Netherlands.

55. The Centre widely disseminated the "Criteria for sustainable development management", including distribution to a number of international conferences with prominent business presence. As a result of this outreach activity, numerous requests for the criteria were received from corporate officials, environmental groups, universities and individuals. The criteria have been translated into French, Spanish, Russian, Chinese and Arabic.

56. With extrabudgetary support from the Government of Sweden, the Centre has initiated a research project on accounting and reporting for sustainable development which examines current practices on environmental information disclosure by transnational corporations in the major accounting and reporting systems; analyses the ways business enterprises could be more efficient in their natural resource use and waste disposal methods; and seeks to develop internationally comparable standards that would assure consistency in the disclosure of environmental practices by transnational corporations.

57. The study on regulations governing the disclosure of risk information by industry, including transnational corporations, and the lessons for industrial environmental protection in developing countries was finalized as a United Nations technical paper and will soon be issued (ST/CTC/111). Another study on global climate change and the role of transnational corporations, focusing on six transnational energy-producing and energy-consuming subsectors, was completed and will be published as a sales document. In the context of the work on global climate change, the Centre participated in a preparatory meeting of the World Meteorological Organization (WMO) and UNEP towards negotiations on a framework convention on climate change, and on the ministerial session of the Second World Climate Conference.

58. The Centre has been actively involved in the preparatory process for the United Nations Conference on Environment and Development, including participation in the working and ministerial sessions of the regional meeting of the Economic Commission for Europe (ECE) for the United Nations Conference on Environment and Development, held at Bergen, Norway, and the first substantive session of the Preparatory Committee held at Nairobi, Kenya. (A more detailed account of the Centre's work in implementation of Council resolution 1990/71 is presented in the report of the Secretary-General on transnational corporations and issues related to the environment (E/C.10/1991/3/Add.1), which is before the Commission.

59. The Centre is also finalizing its contribution to the fifth edition of the consolidated list of products whose consumption and/or sale have been banned, withdrawn, severely restricted or, in the case of pharmaceuticals, not approved, in co-operation with the World Health Organization (WHO) and the Department of International Economic and Social Affairs. It has also participated in an advisory capacity in the work of ILO to draft a code of practice on the prevention of major accidents and that of OECD to develop guiding principles on accident prevention, preparedness and response.

60. The Centre provided technical assistance to Guinea aimed at the establishment of laws, regulations and evaluation of contractual arrangements with transnational corporations involved in the industrial mining sectors.

3. Socio-cultural impact of transnational corporations

(1990-1991 programme element 2.8)

61. The Centre and the United Nations Centre on Human Rights began a project aimed at identifying transnational corporations operating on indigenous peoples' land. The ultimate goal of the project is to analyse the social, cultural, economic and political impact of the activities of transnational corporations on indigenous people. American and South American indigenous peoples' organizations have been contacted and asked to complete a questionnaire concerning transnational corporations operating on their land and having an impact on their community. A database is being created on which to compile maps illustrating the location, size and boundaries of indigenous peoples' lands, and lists of, and information on, the corporations operating on and investing in, these lands. The database will be available for use by interested organizations. Case studies will also be written highlighting problems and solutions.

D. Studies of transnational corporations in specific areas and selected sectors

1. International trade

(1990-1991 programme element 2.2)

62. The Centre, jointly with UNCTAD and the ECLAC/UNCTC Joint Unit, has initiated the preparation of a technical paper on the role of collaborative arrangements with transnational corporations in the promotion of exports from developing countries. The study, which envisages six country case studies, will pay particular attention to the role of non-equity links. The objective is to identify the conditions under which collaborative arrangements with transnational corporations provide a significant boost to exports. The lessons learnt should be valuable to developing countries that assign a high priority to export promotion.

2. Transnational banking

(1990-1991 programme element 2.3)

63. Together with the ECLAC/UNCTC Joint Unit, a study on Debt-Equity Conversions: A Guide for Decision-makers (ST/CTC/104) was completed during the reporting period. The study assesses the significance of "debt-equity swaps" as an instrument of debt reduction, as well as a means for the promotion of certain other objectives, such as increasing the flow of foreign direct investment and repatriating flight capital. The summary of the findings from four country-case studies (Brazil, Chile, Mexico and the Philippines are contained in a report presented to the Commission (E/C.10/1991/5). The evaluation of country experiences suggests that debt-equity swaps have brought about a significant debt reduction in only one country (Chile). They appear to have induced additional foreign direct investment in most countries, directly or as a catalyst, though the quantitative magnitude of additionality is difficult to calculate. Governments have largely succeeded in channeling swap investments into desired sectors or geographical areas and in capturing a significant portion of discounts where policies were designed towards those ends. The long-term impact of swaps on the balance of payments is ambiguous, and measures taken to contain inflationary pressure or round-tripping involve trade-offs with other objectives. This report suggests that there are certain inherent trade-offs among the objectives that debt-equity swap programmes are intended to serve. The design of programmes should, therefore, be based on a clear definition of priorities. Furthermore, debt-equity swap should be viewed as only one of the policy tools in economic management and in debt reduction. A failure in the appropriate choice of other tools could thwart the success of debt-equity swap programmes as well. The Centre intends to publish the country-case studies in a separate volume.

64. As regards the role of transnational banks in external indebtedness, the principal focus of a recent study of the Centre was on accounting, regulatory and taxation practices which affect transnational banks' participation in debt reduction. The study reviewed the recent changes in those practices in major home countries of transnational banks with large exposures to developing countries' debt and identified some additional measures that need to be implemented in order to provide further incentives to transnational banks to participate more actively in the efforts to reduce developing countries' debts. A report on the subject has been submitted to the Commission (E/C.10/1991/4). The report notes that the significant reduction in the stock of developing countries' debt to transnational banks has been facilitated by a variety of regulatory adjustments, including capital adequacy guidelines, accounting and tax treatment of loan-loss reserves as well as accounting and tax treatment of debt-restructuring instruments. Some areas for improvements in regulatory frameworks are pointed out in the context of discussion of adjustments in each creditor country. The report also suggests some general areas for further reforms. These concern modifications in risk-weighted capital guidelines, tax deductibility of discounted asset sales, differentiated accounting treatment of loans to developing countries and penalties for banks which do not agree to participate in debt reduction efforts. The report points to the need for close coordination among creditor countries in formulating regulatory policies to facilitate debt reduction and a greater commitment on the part of

political authorities in creditor countries to ensure that transnational banks respond positively to the incentives offered through regulatory adjustments.

3. Services

(1990-1991 programme element 2.12)

65. During the period under review, the Centre continued its work on the role and impact of transnational service corporations on host developing countries and on issues relevant to the Uruguay Round negotiations on services. Country case studies were completed for selected African, Asian and Latin American countries on the impact, policies and options relating to transnational corporations in the services sector. The studies are being finalized, along with an integrated paper, for publication. A study entitled Transnational Corporations, Services, and the Uruguay Round 2/ was published, based on the materials presented at the workshop for the group of negotiations on services organized by the Centre at Montreux, Switzerland, in November 1989. The study, which deals with the activities of transnational corporations in services, has been widely disseminated to negotiators and others concerned with matters relating to foreign direct investment in services. As mentioned earlier, the publication New Issues in the Uruguay Round of Multilateral Trade Negotiations (Series A, No. 19) 9/ also examined, inter alia, the significance of transnational service corporations' activities in international transactions in services and the relevance of concepts, including those in various international investment instruments, in the context of the Uruguay Round negotiations on services.

66. Telecommunications and computer services and the role played by transnational corporations in the growing telematics and data services markets in Mexico were examined in the Centre's study entitled Transborder Data Flows and Mexico: A Technical Paper. 11/ The study is the latest publication in a series of country case studies by the Centre dealing with transborder data flows and the data and telecommunication industries.

67. The Centre also contributed expertise to a workshop on services organized by the Secretariat of the Caribbean Community in Barbados in May 1990, which focused on issues relating to the multilateral negotiations on trade in services of special interest to the Caribbean region.

IV. STRENGTHENING THE CAPABILITIES OF HOST DEVELOPING COUNTRIES IN DEALING WITH MATTERS RELATING TO TRANSNATIONAL CORPORATIONS

A. Technical cooperation

68. During the period under review, the Centre continued to provide technical assistance in matters relating to foreign investment and technology transfer to developing countries in Africa, Asia and Latin America and, also, to countries in Central and Eastern Europe. Characterizing the efforts of all of these countries is the desire to increase substantially the flow of foreign investment, albeit

under certain terms and conditions, in keeping with changing attitudes and perceptions. This has led to a considerable increase in the demand for the Centre's advisory, information and training services.

1. Composition of the technical co-operation programme of the Centre

(a) Advisory and information services

69. Advisory and information services were rendered to 43 individual countries at an average of 2.4 projects for each country. A slightly higher average was achieved in the African region in which 17 countries benefited from 42 advisory projects. In the Asian and Pacific region, 34 projects were implemented in 16 individual countries and territories, 12 projects in 8 countries in Latin America and the Caribbean and 2 projects in Central and Eastern Europe.

70. Of the advisory and information services projects 69 per cent were related to the formulation of foreign investment regimes; design of investment promotion strategies; drafting of model contracts and agreements; and establishment and streamlining of institutional mechanisms and administrative frameworks for the promotion, selection, approval and monitoring of foreign investments and technology transfer. The remaining 31 per cent of the advisory projects related to specific contractual arrangements with transnational corporations.

71. With respect to sectoral allocation of projects, there were significant reductions in the number of projects on hard-rock mining and on petroleum, while projects related to manufacturing, finance and banking significantly increased. Other projects related to tourism, technology transfer, the environmental impact of investment projects, fisheries and privatization were carried out.

(b) Training services

72. The Centre organized 34 training activities in 1990, consisting of 23 training workshops, 5 seminars for institutions of higher learning and 6 study tours and fellowships. Of the workshops, 9 were held in 6 African countries, 6 were in 4 ASEAN countries including two subregional workshops; 4 were in 3 Latin America and Caribbean countries including one regional workshop; and 3 were in 2 countries in Central and Eastern Europe. One interregional workshop was held on negotiations in the mining and construction sectors. The other workshops dealt with issues of finance, such as foreign exchange policies and debt management; technology transfer; joint ventures and management contracts; general foreign investment issues, divestiture and privatization; and transfer pricing. EMPRETEC, the Centre's comprehensive, multi-stage technical cooperation programme, designed to promote the creation and growth of innovative small- and medium-sized enterprises (SME) using linkages with transnational corporations, has now been extended to two African countries. The programme in Latin America is in an advanced stage of implementation and has shown visible and immediate impact. For example, under the EMPRETEC programme, 200 business plans were prepared and analysed by the voluntary private sector selection committees and over 50 new businesses have been started.

In addition, nearly 100 existing enterprises have expanded their activities. Some 30 joint ventures, sales agreements and technology transfer arrangements between participant entrepreneurs have been generated.

73. Four national seminars were held in Africa to assist institutions of higher learning. Another seminar, also held in Africa, was organized for participating institutions from Africa, Asia and Latin America and the Caribbean in the disciplines of business, economics and law, as a means of exchanging experiences between participating institutions.

74. The Centre continued to assist in the organization of fellowships and study tours as part of its comprehensive programme of assistance to developing countries. In 1990, the Centre arranged study tours and fellowships for officials from Angola, Ethiopia, Malaysia, Thailand and Zimbabwe.

2. Highlights of the technical cooperation activities of the Centre

(a) Policy issues arising from negotiation

75. The Centre continued to provide advice in three areas of negotiation: investment agreements for new commercial projects; renegotiation of existing investment agreements; and privatization. Critical to the successful negotiation of those activities are the nature of the economic environment, the conduciveness of the investment climate and the appropriateness of fiscal arrangements.

76. The Centre has been involved in helping developing countries to improve the trading environment by reducing distortions in prices either by taxes or excessive controls or artificial exchange rates. This issue has had to be addressed by the Centre in the course of, inter alia, assisting developing countries in the preparation of various privatization deals.

77. With respect to the investment climate, most developing countries have foreign investment laws which officially welcome foreign investment. Many countries present extremely difficult business conditions. Those conditions include lack of currency convertibility, inappropriate infrastructure and utilities, import restrictions and ineffective public administration. Those conditions could have a number of adverse consequences for foreign investment. During the course of negotiations, the Centre has suggested alleviation of some of those conditions, for example, by recommending currency retention rights.

78. With respect to fiscal arrangements, the Centre advised that government equity was a weak instrument for revenue collection and was neither necessary nor sufficient to exercise control over major foreign enterprise owing to the fact that Governments hold adequate regulatory powers. While there is now greater acceptance in developing countries of the primacy of taxation as a means of securing public revenues there have been cases of reluctance to reduce tax rates to moderate standards in line with international trends.

79. In a country with very high corporate tax rates and customs duties the first approach of foreign investors is to seek lengthy tax holidays and duty relief. In the event, a case-by-case negotiation is required. This absorbs considerable effort by the host Government and by advisers to arrive at fiscal arrangements which then require parliamentary ratification. The negotiated fiscal arrangements would rarely be greatly different from those which could have been put in general legislation from the outset.

80. Abuse of transfer pricing remains an important and disturbing compliance problem. The Centre advised a Government which had lost touch with the international market-place and had experienced significant underpricing of a commodity marketed by a local affiliate through its offshore parent. Recent efforts, with the assistance of the Centre, to ascertain the final sales value of the commodity have been met by refusal by the parent company to disclose the information. The parent company claims it would breach its domestic law if it disclosed the information even if the ultimate buyers of the commodity consented to disclosure.

(b) Assistance to newly "open-door" economies in attracting foreign investment

81. Technical assistance continued to be provided to countries which have recently liberalized their policies towards foreign investment. The Centre has initiated or implemented advisory assistance to Afghanistan, Angola, Cuba, Democratic People's Republic of Korea, Ethiopia, Mongolia, Mozambique, Myanmar and Nicaragua.

82. In most cases, the advisory services provided to newly "open door" economies were in the formulation or re-examination of policies, laws and regulations to support a liberal foreign investment position. The Centre has also assisted in drafting implementing guidelines of related regulations, reviewed and drafted company laws and helped set up foreign investment units. The legislative, fiscal and administrative regimes of a foreign investment policy were the specific areas of concern to the Government and were the primary targets for the technical assistance.

83. Newly "open door" economies are often at a clear disadvantage in translating their new policies on foreign investments to actual inflows of foreign investments. Most of those countries that have recently embarked on a liberalized policy towards foreign investments have not actually experienced a significant increase in foreign capital inflow. Major obstacles inherent in a previously "closed" economy hinder the significant inflow of foreign resources. Normally, the credit standing of those Governments is unsatisfactory and there is also an absence of investment guarantees. Foreign companies, therefore, are quite reluctant to commit capital at high levels of risks, particularly when the economy in question has had no previous significant dealings with foreign investors. The newly "open door" economies are also characterized by the dominance of the State enterprise system, particularly in the raw material and service industries. This system, further reduces the scope and flexibility of decision-making by joint venture enterprises. Furthermore, there is often an absence of transparent regulations and procedures regarding foreign exchange transactions, labour/management relations, import/export operations, banking and financing arrangements and the approval and

monitoring of joint ventures. Finally, there is a lack of information about both investment opportunities and possible foreign partners.

84. In recognition of these obstacles and to assume a more active approach in the provision of technical assistance to newly "open door" economies, the Centre has embarked on advisory programmes designed to attract foreign investment to these countries, including the identification of possible foreign partners. The Centre continues to provide support in the legislative, fiscal and administrative regime build-up but also extends its assistance to specific activities which would counteract inherent obstacles rendering their policies useless.

85. In one instance, the Democratic People's Republic of Korea receive comprehensive technical assistance from the Centre which included the formulation of a strategy to attract foreign investment and technology. The Centre is involved in the preparation of an investment guide containing information, policy statements, laws and regulations, including sample application forms for investing in the country. A comprehensive brochure containing investment opportunities and selected investment profiles is under preparation. A roundtable/investment forum will be held with the participation of transnational corporations, Western business associations and Governments. Finally, the Centre has made commitments to the Government to help establish an operational information system on foreign investment and technology.

86. In Ethiopia, which had recently approved a new foreign investment legislation and had provided for major liberalization and emphasis on new investments through the private sector, the Centre initiated advisory assistance in attracting promotion of foreign investments through joint ventures. The objective is to accelerate the pace of economic and industrial development. In addition to the preparation of regulations and guidelines on attracting foreign investment projects, the Centre also prepared investment profiles on selected sectors and projects, helped identify potential joint venture partners and assisted in the publication of an investment promotion brochure.

87. Finally, in Angola, the Centre has been providing technical assistance to support the Government's economic and financial recovery programme through the establishment of a comprehensive and cohesive foreign investment strategy. New foreign investment legislation was drafted with assistance from the Centre and a foreign investment unit was created to attract, evaluate, negotiate and monitor foreign investment projects. The Centre continues to assist this unit in efforts to attract foreign investment that could contribute positively to the country's economic and financial recovery programme.

(c) Formulation and drafting of legislation

Formulation of basic investment codes

88. Namibia, which the Centre has been assisting in drafting an investment code is, on the recommendation of the Centre, taking an innovative approach to the formulation of its foreign investment policy. The code provides an example of the emphasis placed by the Centre in advice given on that subject.

89. The investment code, which was recently approved by the Namibian Parliament, does not contain restrictions on the range of business activities in which foreign investors may engage. Where an activity would be open to local private sector investment, it would be open to foreign investment. There would, of course, be restrictions on foreign investment in respect of those activities which, under the law, are a monopoly of the Government, in the same way that there is a restriction on local private sector investment.

90. However, while a country may establish a relatively open regime under which all investment is treated equally, every Government has certain specific development objectives and expects that foreign investment should play a dynamic role in their realization. With that in mind, an investment code can create a category of special investments to which it extends a special regime of guarantees and incentives.

91. The experience of developing countries establishes very clearly that the concerns of prospective investors focus mainly on two issues. Those two issues are thus the ones that the Centre recommends should be addressed by developing countries in providing guarantees and incentives.

92. The first issue concerns security of title and, in particular, the possibility that investment assets may be expropriated without guarantee of sufficient compensation. The second issue concerns restrictions on foreign exchange transactions and the availability of foreign exchange to meet essential investor requirements. In most developing countries, foreign exchange constraints have been a major obstacle impeding the flow of foreign investment. Against that background, developing countries recognize that they must be prepared to offer meaningful guarantees if new investment is to be attracted and some of the profits retained within the country.

93. Many Governments have considered whether, following the practice in some other developing countries, they should provide in an investment code special fiscal incentives, such as tax holidays, import duty concessions and the like. The Centre has recommended that they do not do so if the generally applicable rate of income tax is reasonable and attractive. Tax concessions could be wasteful since in many cases, if other conditions are satisfactory, tax concessions will not be required to attract foreign investment except in the case of export oriented projects. Furthermore, double taxation treaties, and the unilateral double taxation relief offered by many capital exporting countries, mean that the practical effect of tax holidays is often uncertain.

Formulation of petroleum laws

94. Over the years, the Centre has provided technical assistance to developing countries in their formulation of petroleum laws. In some cases this has involved drafting new legislation where none existed, and in other cases it has involved amending existing legislation to take account of new emerging needs. During 1990, the Centre provided such assistance to a number of countries in Africa and the Pacific region.

95. In looking at petroleum legislation in different countries it is possible to discern two contrasting styles. At one end of the spectrum a host Government may produce a legislative scheme which provides only a loose framework, leaving the negotiators to work out the terms and conditions with the investor, clause by clause. At the other end of the spectrum, are legislative schemes which seek to cover in detail most of the issues that arise in the course of exploration and production.

96. In many of the countries where the Centre provided assistance, it has recommended a hybrid system. The substantive provisions of the law present a framework to facilitate the conclusion of an agreement. However, the law makes provision in some detail for the matters to be covered in the agreement which the host country and the oil company investor will eventually sign. The law establishes the petroleum act as the basic instrument for regulating exploration and production by foreign oil companies and contains provisions setting out a range of matters which must be dealt with in every petroleum agreement. Those cover such topics as duration, periodical review, relinquishments, equity participation by a State oil company and royalty payments.

Formulation of mining laws

97. During the last 12 months, the Centre was requested by at least two West African countries, one East African country, one southern African country and two island countries from the Pacific region for assistance in reviewing and redrafting their mining legislation. In providing the assistance, the Centre noted the trends of what might be described as the new generation of mining laws.

98. The new generation of mining laws is not a uniform body of statute law with identical provisions for each topic covered. There are many differences between these laws, some significant. However, what they have in common is a philosophy reflecting the concern of developing countries for "permanent sovereignty" over their own natural resources. The colonial statutes which this body of law replaced provided the framework for an essentially open system. Prospecting for and mining of minerals was seen as an activity which, with very few exceptions, should be open to all comers. The function of the mining code was to ensure that prospecting and mining operations were conducted in accordance with certain basic standards, mainly technical, and to resolve competing claims among a diverse assortment of persons who might be interested in holding mining rights.

99. In contrast, the mining codes now being adopted by most developing countries start from the assumption that a Government, or its agencies, has a responsibility to play a positive role in the development of mineral resources.

(d) Assistance to regional integration movements in developing countries

100. Spurred on by the example of "Europe 1992", developing countries have intensified their regional integration efforts.

The PTA Charter on Multinational Industrial Enterprises

101. The Preferential Trade Area of Eastern and Southern African States (the PTA), which now includes 18 States, is presently in the process of establishing organizational forms and structures designed to enhance regional integration and ultimately accelerate the pace of economic growth among its members. Thus, since the entry into force of the PTA treaty in September 1982, member States have been active in formulating regional schemes on issues such as the gradual liberalization of trade within the subregion, harmonization of customs control procedures and the creation of centralized banking and clearing house facilities. It is perhaps too early to reach conclusions on the economic impact of such measures, but the general thrust of the organization towards increased integration is already quite evident.

102. Within this general context, the Centre has, in recent years, assisted the PTA in formulating a regime of Multinational Industrial Enterprises (MIEs) for countries in that subregion. The Centre's work in this area culminated in November 1990 when a Charter on Multinational Industrial Enterprises was unanimously adopted by the PTA at its ninth summit meeting in Mbabane, Swaziland. At the same meeting, heads of State or their representatives signed the treaty, and while the document needs to be ratified by nine States before it actually enters into force, the Centre is optimistic that those ratifications will be forthcoming in the near future. The Centre expects to continue its work on important projects. In this regard, it is presently making arrangements to assist the PTA in drafting various protocols designed to facilitate the effective implementation of the Charter.

Caribbean Community and the Organization of the Eastern Caribbean States

103. For a number of years the Centre has been working closely with the 13 English speaking countries of the Caribbean Community (CARICOM) and its seven-member subgrouping, the Organization of Eastern Caribbean States (OECS). The organization has as its main objective, the economic integration of member States through the establishment of a common market regime, the coordination of the foreign policies of member States and the efficient operation of certain common services and activities for the benefit of the region's peoples. The principal form of assistance by the Centre to CARICOM has been through regional workshops.

104. The Centre's assistance to the OECS focused mostly on the harmonization of investment policies, laws and regulations in the member States of the organization. Between 1987 and 1990, studies were prepared on guidelines for promoting foreign investment and technology transfer, on double taxation treaties and tax information exchange agreements, on negotiating bilateral investment treaties and on guidelines on contracts for technology transfer and management in the OECS member States.

Association of South-East Asian Nations

105. In the area of training, the Centre continued its programme of support to the ASEAN Committee on Finance and Banking. The papers and proceedings of one workshop on the management and supervision of financial institutions will soon be

published. Another workshop on negotiating with transnational banks included a simulation exercise which provided public and private sector officials with "real life" application for borrowing negotiations and included financial, macro-economic, legal and accounting considerations. It centred around a computerized "spreadsheet analysis model", which recorded and evaluated the debt management strategy that each country team formulated. Mock negotiations with a steering committee were held, with each team presenting their respective strategies.

3. Financial and operational arrangements

106. Table 1 shows income, disbursements and balances of the Centre's Trust Fund for Technical Cooperation for the period 1986-1990. The contributions received declined from a high of $2.9 million in 1988 to $2.2 million in 1990. The preliminary closing balance for 1990, however, shows a higher level than the previous year due primarily to the much lower level of expenditures during the year. It indicates increased implementation of UNDP financed projects rather than projects financed from the Trust Fund. Table 2 shows the total extrabudgetary resources and disbursements of both the Trust Fund and UNDP-funded projects, and tables 3 and 4 provide an overview of the geographical distribution of disbursements in 1990 for both advisory and training services.

Table 1. Trust Fund for the United Nations Centre on Transnational Corporations; income, disbursements and balances: 1986-1990 a/

(United States dollars)

	1986	1987	1988	1989	1990
Opening balance	1 043 154	1 120 834 a/	1 050 548 a/	1 845 222 a/	2 149 727 a/
Contributions received					
China	20 000	20 000	20 000	20 000	20 000
Denmark	50 000	104 442	116 081	136 668	176 414
Finland	47 985	112 284	124 595	118 287	175 263
France	--	--	67 742	67 742	80 000
Germany*	--	60 187	54 768	--	--
Italy	--	--	1 713 903	1 563 600 b/	--
Japan	--	--	81 600	100 000 b/	230 000
Malaysia	--	--	--	--	12 000
Netherlands	59 280	72 855	74 813	70 320	200 000
Norway	200 811	212 023	224 333	215 641	381 045
Poland	12 500 c/	16 700 d/	--	--	6 500 e/
Republic of Korea	10 475	--	--	--	--
Sweden	215 146	--	249 688	247 893	529 270
Switzerland	161 290	202 020	185 185	200 669	413 463
Zaire	--	500	500	500	1 000 b/
Zambia	--	--	--	636	--
Subtotal	777 487	801 011	2 913 208	2 741 956	2 224 955
Interest income	68 482	102 696	106 742	46 678	50 000
Total available funds	1 889 123	2 024 541	4 070 498	4 633 856	4 424 682
Less disbursements	768 289	973 993	2 225 276	2 484 129	1 444 774 f/
Closing balance	1 120 834 a/	1 050 548 a/	1 845 222 a/	2 149 727 a/	2 979 908 a/

Notes: An em dash (--) indicates that the amount is nil or negligible.

* Through accession of the German Democratic Republic to the Federal Republic of Germany with effect from 3 October 1990, the two German States have united to form one sovereign State. As from the date of unification, the Federal Republic of Germay acts in the United Nations under the designation of "Germany".

a/ Opening and closing balances reflect, where indicated, pledges and also contributions in non-convertible currency.

b/ Pledged contribution.

c/ Contribution in non-convertible local currency, converted into dollar value at 200 zlotys per dollar.

d/ Contribution in non-convertible local currency, converted into dollar value at 300 zlotys per dollar.

e/ Contribution in non-convertible local currency, converted into dollar value at 9,310 zlotys per dollar.

f/ Preliminary figures.

Table 2. Total extrabudgetary resources and disbursements of the Trust Fund and UNDP: 1986-1990 a/

(United States dollars)

	1986	1987	1988	1989	1990 b/
Total resources	2 870 882	3 507 744	5 374 580	4 752 061	6 119 066
Total disbursements, of which:	1 750 048	2 489 892	3 529 358	4 180 594	3 895 092
Trust Fund	768 289	973 993	2 225 276	2 484 129	1 261 928
UNDP	981 759	1 515 899	1 304 082	1 696 465	2 633 164

a/ Unaudited.

b/ Preliminary figures.

Table 3. Expenditures on workshops and other training activities: 1990 a/

(United States dollars)

	Trust Fund	UNDP
Africa	218 264	555 430
Angola	--	16 300
Ethiopia	--	62 258
Ghana	29 404	205 862
Guinea	--	31 198
Kenya	--	33 126
Nigeria	33 860	179 677
Sierra Leone	--	27 009
Regional	155 000	--
Latin America	73 524	286 317
Argentina	9 000	--
Bolivia	--	29 398
Brazil	--	79 340
Chile	--	30 000
Uruguay	36 928	77 270
Regional	27 596	70 309
Asia and the Pacific	36 568	362 859
Bangladesh	16 039	--
China	--	42 752
India	20 529	--
Malaysia	--	12 000
Myanmar	--	24 944
Nepal	--	30 776
Thailand	--	31 815
Regional	--	220 572
Eastern Europe	4 147	--
Yugoslavia	4 147	--
Interregional	10 205	--
Total expenditures	342 708	1 204 606

Notes: An em dash (--) indicates that the amount is nil or neglible.

a/ Preliminary figures.

Table 4. Extrabudgetary expenditures on advisory projects: 1990 a/

(United States dollars)

	Trust Fund	UNDP
Africa	84 078	756 853
Angola	--	217 049
Cameroon b/	4 671	--
Ethiopia b/	8 560	234 229
Ghana	15 001	--
Guinea b/	--	9 867
Mozambique b/	4 000	--
Namibia b/	21 038	--
Papua New Guinea	--	19 658
Seychelles b/	--	18 067
Sierra Leone b/	--	145 699
Tanzania b/	15 100	--
Uganda b/	13 408	--
Regional b/	2 300	112 284
Latin America	36 480	69 177
Bolivia	8 127	--
Colombia	5 066	--
Nicaragua	11 887	--
Regional	11 400	69 177
Asia and the Pacific	32 693	643 775
Bangladesh b/	--	7 458
China	--	12 000
Egypt	--	60 406
Korea, Dem. Rep.	--	90 700
Laos b/	--	28 409
Malaysia	5 477	9 232
Mongolia	27 216	--
Nepal b/	--	15 438
Thailand	--	17 869
Viet Nam b/	--	4 000
Regional	--	398 263
Western Asia	6 628	--
Regional	6 628	--
Total expenditures	159 879	1 469 805
Share of low-income countries of total expenditures (percentage)	43	39

Note: An em dash (--) indicates that the amount is nil or neglible.

a/ Preliminary figures.

b/ Low income economies: per capita gross national product less than $700 (1986).

B. Comprehensive information system

107. As in the past, the Centre's information system continues to be a major component of its research and technical cooperation activities. Owing to the importance of access and availability of information in the investment and negotiation processes, requests to the Centre from developing countries for assistance in the implementation of information systems components have increased during 1990. This trend has, in recent years, helped redefine the approach that the Centre takes to developing information systems on transnational corporations, which shifted from an emphasis on the Centre's own research to the investment and negotiating needs of developing countries.

1. Development of the information system on transnational corporations

108. The Centre has developed and maintains an information system which comprises textual, financial, macro- and micro-economic data on transnational corporations and foreign direct investment. This information is stored at the Centre in different media, including, among others, annual reports and microfiche information on individual companies' annual reports, legal information in the form of collections of contracts and legislation, databases on corporate financial and non-financial corporate information, foreign direct investment and macro-data directories, as well as bibliographies and other sources of information on issues related to transnational corporations. These components of the Centre's information system attempt to provide an accurate portrait of the following issues.

(a) Handbook on Foreign Direct Investment

109. The definition of foreign direct investment, the most widely utilized indicator of the activities of transnational corporations, differs widely from country to country. Consequently, the amount of foreign direct investment, as reported by a particular country may not be measured in the same way and, hence, be comparable to that reported by another country, thus rendering international comparisons difficult. Moreover, bilateral comparisons are further complicated by the fact that outward foreign direct investment in a given country, as reported by the home country, may differ from that reported by the recipient. In addition, the unavailability of data on reinvested earnings, an important component of foreign direct investment flows for a large number of countries, results in underestimates of foreign direct investment flows. These factors dictate caution in interpreting foreign direct investment data.

110. In 1990, the Centre continued its work on a six-volume Handbook on Foreign Direct Investment (ST/CTC/66), a major collection of foreign direct investment statistics, corporate data, legal information and reference to bibliographic sources. The project is a joint undertaking of the Centre and its joint units with ECA, ESCAP and ECLAC. The Handbook presents foreign direct investment data compiled from national and other sources in a standardized format, as a first step towards improving comparability of those data among countries; it provides the definition of foreign direct investment used in each country, thus alerting the

reader to the deficiencies of the data presented and identifying areas where technical assistance programmes will have the greatest impact. In addition, the Handbook provides data on individual transnational corporations active in the respective countries; information on the regulatory environment; and bibliographic data pertaining to the activities of transnational corporations in a given country. In this way, the Handbook is a unique source not only of data on the activities of transnational corporations, but also of methodological issues underlying foreign direct investment statistics. In resolving these issues, the Centre, along with other international organizations, is working towards a common definition of foreign direct investment, as well as on methods for improving the collection of data. The Handbook is expected to be issued during the course of 1991. It will be a part of the Centre's database on transnational corporations and already serves as a basis for various analyses undertaken by the Centre.

(b) Information on individual corporations

111. Throughout 1990, the Centre continued to collect micro-economic and financial information on the world's transnational corporations, expanding its existing collection of the world's largest extractive and manufacturing transnational corporations (a group which is referred to as the "Billion Dollar Club"), as well as starting the collection of information on the largest corporations in service industries (see sect. (f) below).

112. The Billion Dollar Club database is an integral part of the Centre's local area network of personal computers (one of the first such networks to exist in the United Nations) and is accessible from any computer participating in the network. As reported last year, the software package underwent extensive modifications to enable its utilization in other locations outside the Centre, such as governmental and research institutions in developing countries and in regional and international organizations.

113. Comprehensive information on transnational corporations in service industries has been provided in The Directory of the World's Largest Service Companies (Series One). Published in 1990 jointly with Moody's Investors' Service, this one-of-a-kind Directory goes a long way towards filling the information gap that exists with respect to transnational service corporations despite their growing importance in the world economy. It identifies, ranks, and provides critical information on the largest public and privately owned transnational corporations in 14 service industries. It is intended that continuation of the services directory project, including updating of the first series, expansion of industries and companies covered, and establishment of a computerized on-line database, will be made self-supporting through reinvestment of funds generated by sales.

114. In 1990, the database software and data were made available to several requesting institutions, primarily in Latin America, doubling the external user base of the previous year. A pilot project started in an Asian country at the end of 1989, involving five regional installations, collection and exchange of corporate data within the country and its further exchange with the Centre provided the Centre with its first batch of data on local affiliate companies which, owing to usage of similar structures, was readily convertible and available to the

Centre's own databases. In this way, it was demonstrated that both the Centre and individual Governments can benefit from the establishment of long-term data-exchange relationships. In its current form, the database allows for multiple-format retrieval of financial and affiliate corporate data, and it can be used either in its standard stand-alone version or within a user's local area network.

115. The Centre continued to make extensive use of CD-ROM compact disk databases for financial balance sheet information on over 4,700 major transnational corporations world wide. Reflecting the increasing availability and popularity of this new technology, the Centre has also subscribed to a large CD-ROM periodical database, which includes tens of compact disks filled with full-text articles on international business, investment and corporate topics. All this CD-ROM information contributed significantly to the enhancement of the Centre's in-house databases and also served as a source of data for numerous Centre publications.

116. In 1991, the Centre will embark on the integration of all its existing computerized databases (i.e., Billion Dollar Club, services) as well as databases under development (small and medium-sized enterprises, transnational corporations from developing countries, etc.) into a Centre-wide information base in the local area network in order to maximize access to all the Centre's staff. It is also expected, in the longer term, to make this information base accessible to outside users, either by remote telecommunication or by publishing data on ROM.

(c) Information on policies, laws and regulations

117. The Centre updates a collection of existing national and regional laws and regulations relating to the activities of transnational corporations. The eighth volume of this series, which consists of legal information on 20 countries, including investment legislation, regulations on foreign exchange control and technology transfer, fiscal incentives and taxation, and investment guarantees was completed.

(d) Information on contracts and agreements

118. The Centre continued to collect and make available upon governmental request contracts and agreements negotiated with the transnational corporations. The collection includes approximately 1,000 mining and petroleum agreements and several hundred more covering other sectors.

119. The collection is used to support the technical cooperation and information work of the Centre which provides sanitized copies of the agreement in response to requests from qualified users. Further information on the legal information services of the Centre are covered in the report of the Secretary-General on the comprehensive information system: legal information services (E/C.10/1991/14), which is before the Commission.

(e) Information sources

120. The Centre assisted users at the national level in the building and management of information resources on transnational corporations. This is in response both to intergovernmental mandates on information access and to explicit requests from end users. Thus the Centre has developed and is now testing an end-user version of a sophisticated computer system to collect and store citations and abstracts of literature on transnational corporations and produce ad hoc high quality bibliographies. The system will be made available for installation and management in government offices.

121. The Centre is also making available to qualified users, free of charge, its studies produced at Headquarters or in the Joint Units. Nearly 100 government and research institutions have, at their request, been added to the Centre's document distribution mailing list during the year. Also available on request by qualified users are copies of 500 technical papers used in workshops conducted by the Centre, and consultant reports. To facilitate access to its documentation, numbering over 1,200 items, the Centre has published as in previous years the "List of UNCTC sales publications"; "Documents of UNCTC and other organizations of the United Nations system relating to transnational corporations"; "Documents of the Joint Units of UNCTC and the regional commissions; workshop papers of UNCTC: an annotated bibliography"; and "Consultant reports of UNCTC: a bibliography with indexes".

122. The Centre is in the process of analysing the information requests received from Governments in the past 10 years with a view to determining reasons and levels of use, types of information of greatest importance to government requestors, and levels of satisfaction. The analysis of the data collected will be used to refine and expand services to current users, to identify potential users, and to promote and disseminate services specifically tailored to their needs. Particular attention will be paid to the information needs of developing countries.

2. National information systems

(1988-1989 programme element 3.6)

123. The Centre continued to respond to requests from Governments for assistance in developing and refining national information systems on transnational corporations. In this regard, for example, the Centre assisted a governmental institution in the definition of guidelines for the design of a multiple-database system covering different aspects of foreign investment. In another case, the Centre has provided a governmental organization with a system to register transfer of technology agreements.

124. Pursuant to a recommendation of the Workshop on Developing National Information Systems, held in May 1988, the Centre undertook to develop a set of basic information to be incorporated into national information systems. The Centre is preparing a manual for government officials on the information needs and sources of developing countries on transnational corporations. The scope of the manual was presented in the report submitted to the fifteenth session of the Commission (E/C.10/1989/15).

3. Roster of experts

(1988-1989 programme element 3.7)

125. During the period under review, the internal publication on the use of consultants for advisory and training services continued to be maintained. Although the Centre endeavours to engage new experts with a view to attaining a wider geographical distribution of experts and involving more women in its technical assistance programme, this internal publication increases the efficiency of the selection process, thereby providing recipient Governments with the most suitable experts available from the Centre. Action was also initiated to review and update the computerized database on the roster of experts.

4. Response to ad hoc requests for information

(1989-1990 programme element 3.5)

126. Use of the Centre's information services registered a marked increase. Requests for information climbed from 2,019 in 1989 to 2,610 in 1990, an increase of over 25 per cent. To these should be added short queries, usually formulated verbally, which reached 2,500, bringing the total to over 5,000 requests during the year. Governments continued to originate about 30 per cent of all information requests. Intergovernmental and non-governmental organizations were the second largest group of users. The year saw an increase in the information requests concerning codes and standards affecting transnational corporations, and the Centre's work on accounting and reporting.

127. The increase may be explained through the epidemic model used in information science, which in simple terms states: "The more one does, the more one is asked to do." In other words, satisfied users will access a good source of information over and over again and will generate other interested users. The Centre attributes the good feedback to the installation throughout the Centre of modern information technologies, which have made it one of the most advanced departments of the United Nations in this respect. In particular, four large databases on compact disk were recently installed, permitting requestors to access and search directly large information stores of numerical information on companies, and citations and abstracts of business literature, and to retrieve information exactly suited to their needs. The databases have proven to be very popular with both researchers and practitioners representing a large spectrum of nationalities.

128. While the staff has been able to cope with the increased demand for services through the effective use of information technology, it is none the less true that the increase has put a strain on resources. It is likely that it will be possible to meet further large increases in the demand for services only through the infusion of additional resources.

Table 5. Requests, by category and type of requestor: 1990

	Requests made by													
	Governments		Intergovernmental organizations		Trade union organizations		Business organizations		Academic Institutions		Media and public Interest Groups		Total	
	No.	Percentage of category	No.	Percentage of category	No.	Percentage of category	No.	Percentage of category	No.	Percentage of category	No.	Percentage of category	No.	Percentage
Developing countries	375	51	18	5	31	15	25	12	149	22	94	24	692	27
Developed market economy countries	251	34	52	13	135	66	178	86	412	61	158	40	1 186	45
Socialist States of Eastern Europe	111	15	--	--	24	11	5	2	74	11	33	8	247	9
International organizations	-	-	320	82	18	8	--	--	41	6	106	27	485	18
Total	737	100	390	100	208	100	208	100	676	100	391	100	2 610	100

Note: An em (--) indicates that the amount is nil.

A hyphen (-) indicates that the item is not applicable.

.../

Table 6. Requests, by subject: 1990

Subject	Governments		Requests made by Intergovernmental organizations		Non-governmental organizations		Total requests	Percentage
	No.	Percentage	No.	Percentage	No.	Percentage a/		
Industries	133	18	108	28	210	14	461	17
Individual transnational corporations	170	23	67	18	150	10	394	15
Laws and regulations	66	9	25	6	120	8	218	8
Contracts	70	10	13	3	45	3	131	5
Macro-data	90	12	78	20	448	31	659	24
Codes b/	60	8	35	9	240	16	351	13
United Nations Centre on Transnational Corporations	89	12	24	6	150	10	270	10
Information sources	59	8	39	10	120	8	225	8
Total	737	100	390	100	1 483	100	2 610	100

Notes: Percentages do not necessarily add to totals, because of rounding.

a/ Including academic institutions, trade union and business organizations, the media and public interest groups.

b/ Including code of conduct on transnational corporations, international standards of accounting and reporting, code of conduct on transfer of technology, environmental issues etc.

V. REGIONAL ACTIVITIES

129. The joint units established by the Centre with the five regional commissions serve as focal points for the entire spectrum of its activities in the respective regions, particularly in the fields of research, information and liaison with Governments. In 1990, these units made important contributions to the programme's implementation.

A. Joint Unit established with the Economic Commission for Europe

130. During the reporting period, the Joint Unit focused its research on the following projects:

(a) The first part of a study on the petrochemical industry in the Gulf countries and the role of transnational corporations, undertaken in cooperation with the ESCWA/UNCTC Joint Unit;

(b) An input to the Centre's study on transnational corporations and sustainable development, particularly to the discussion of options for facilitating access by and transfer to developing countries of environmentally sound technologies;

(c) A project on Japanese direct investments in Europe.

131. In the area of technical assistance, the Joint Unit made a contribution to the establishment of the Romanian Agency for the Promotion of Foreign Investments and Economic Assistance. It also represented the Centre in various international meetings and conferences held in Geneva.

132. The Joint Unit continued its liaison work for the Centre with international organizations, Governments and governmental agencies in the European region.

133. Within the limits of its resources, the Joint Unit continued work on setting up in Geneva the Regional Documentation Unit on Transnational Corporations.

B. Joint Unit established with the Economic and Social Commission for Asia and the Pacific

134. During the reporting period, the Joint Unit undertook the following research projects:

(a) Impact of transnational corporations in the international trade of primary commodities (funded by the Government of the Netherlands);

(b) Transnational technology towards the year 2000 (funded by the Government of the Republic of Korea);

(c) Transnational corporations and selected services industries of developing countries in the Asia and Pacific region (funded by the Government of Japan);

(d) Evaluation of the contribution of transnational corporations to technology transfer in the export processing zones and science parks in developing countries of Asia and the Pacific (funded by the Government of the Netherlands).

135. The Joint Unit continued to collect, analyse and disseminate to member States information and data relating to the activities of transnational corporations in the region, particularly on laws, regulations and general policies relating to the operations of transnational corporations; foreign direct investment flows and non-equity arrangements; and data sources for research activities, and information services.

136. The Joint Unit organized a symposium on Transnational Technology towards the Year 2000 in the ESCAP Region, which was held at Bangkok on 23-26 April 1990.

137. The following technical publications were completed in 1990: Environmental Aspects of Transnational Corporation Activities in Pollution-Intensive Industries in Selected Asian and Pacific Developing Countries, ESCAP/UNCTC Publication Series B, No. 15, (373 pages); and Asia-Pacific TNC Review, ESCAP/UNCTC Publication Series A, No. 7 (78 pages). Transnational Technology Towards the Year 2000, ESCAP/UNCTC Publication Series B, No. 16, forthcoming.

138. As in the past, the Joint Unit continued to provide technical and information assistance to countries of the region. The Joint Unit disseminated information to ESCAP member States and ESCAP's 13 focal points in the region. It also continued to assist the Centre in the provision of advisory services to countries of the region.

C. Joint Unit established with the Economic Commission for Latin America and the Caribbean

139. During the reporting period the Joint Unit focused its research activities on the following three areas: national experiences and policy alternatives with regard to foreign direct investment; industrial restructuring and international competitiveness; and activities of transnational banks and the financial sector.

140. In the first area, case studies have been undertaken on Mexico, Chile, Brazil, Colombia and Peru. For the Mexican case study background papers on industrial modernization and foreign direct investment and economic development were prepared. On Brazil, a report on the incidence of foreign investment in economic decision-making and on liberalization in the treatment of foreign investors was prepared and will soon be published. The Chilean case was elaborated through studies on foreign capital participation in national development, particularly on the Government's strategy in attracting foreign investment and on corporate behaviour within the context of the legal and institutional framework set by the Government. In addition, papers on the evolution of foreign direct investment in Colombia in the 1980s, and on the role of foreign capital in the Peruvian

manufacturing sector, were undertaken. Projects on the Soviet and Chinese experience of negotiating with transnational corporations, based on those countries' economic collaboration with the Latin American region are at different stages of implementation.

141. Analytical work on the industrial restructuring and international competitiveness of Latin American countries involved the preparation of papers on (a) perspective patterns of technological behaviour of national and transnational corporations in the Brazilian industrial sector; (b) industrial restructuring in the Mexican automotive sector; (c) transnational corporations and industrial restructuring in Colombia and Chile; and (d) the capabilities for design engineering in developing countries and the transfer of foreign technology.

142. In the third area the Joint Unit contributed to the Centre's technical paper on "Debt equity conversion: a guide for decision-makers". In substantiating this subject, two case studies (on Brazil and Chile) were carried out. The Joint Unit also provided a substantive input and participated in a workshop organized by the Centre on Debt and External Resources Mobilization and Management (St. John's, Antigua, 22-26 October 1990).

143. The Joint Unit, in close cooperation with the Centre, made an important input to the Handbook on Foreign Direct Investment by collecting and analysing data on Latin America and by arranging for cooperative links with a variety of national institutions in the region.

144. In order to overcome the problems of incompatibility of national and international statistics in the preparation of various country case studies, the Joint Unit will organize in 1991 a regional workshop. Background papers for the workshop, which will cover a range of methodological and definitional issues in the statistics on foreign direct investment, have been initiated.

145. A project is also under development on setting up a regional system on exchange of national information and experiences on foreign direct investment with a view to enhancing the contribution of foreign capital to national development and of strengthening the national decision-making capacity in this area.

146. In collaboration with the Centre, the Joint Unit promoted in the region the Centre's Billion Dollar Club database. The software was installed with the Board of the Cartagena Agreement (JUNAC) and the Chilean Committee on Foreign Investment.

147. The Joint Unit was supportive in the execution of the Centre's technical assistance programme in Latin America. This support is exemplified by the Unit's effective coordination efforts in Peru with the Ministries of Energy and Mines and with the Ministry of Economy and Finance.

D. Joint Unit established with the Economic Commission for Africa

148. During the reporting period, the Joint Unit undertook research on transnational corporations within the context of the United Nations Programme of

Action for African Economic Recovery and Development, with particular emphasis on the following subjects:

(a) The role of transnational corporations in African least developed countries: two case studies were conducted on the role of foreign private investment in development financing, which examined, respectively, the national policies of Mali and Lesotho towards foreign direct investment, assessed the relevant institutional framework in the light of developmental objectives, evaluated the impact of actual foreign direct investment flows on the national economy and suggested policy recommendations aimed at improving the existing situation;

(b) Transnational corporations in the services sector of African countries: two case studies were prepared on the role of transnational corporations in the services sector of Ethiopia and Liberia, respectively, which analysed national policies and the regulatory framework related to the operations of foreign capital in the services sector, examined the activities of transnational services corporations and evaluated their socio-economic impact;

(c) Development of an African information system on transnational corporations: an analytical study was prepared on the relevant experience of the Côte d'Ivoire of which the main objective was to assess strategies and policy options available in the development of the Ivorian information system on transnational corporations through Centrale de données financières, which represents a unique experience in Africa.

149. The Joint Unit also collected macro- and micro-data relating to operations of transnational corporations in Africa as the regional input to the Centre's Handbook on Foreign Direct Investment.

150. During the period under review, the Joint Unit initiated two case studies on intra-African mechanisms for the promotion of foreign direct investment in selected subregions. These studies are intended to strengthen the capability of African developing countries in dealing with matters related to transnational corporations in sectors of major concern to the existing economic groupings.

151. The Joint Unit issued No. 7 of Transnational Focus. The Joint Unit, acting as the focal point of the Centre's work in Africa, also widely distributed reports and studies prepared by the Centre, as well as The CTC Reporter.

152. The Joint Unit participated in a workshop, organized by the Centre on "Negotiating Joint Venture Agreements with Transnational Corporations", held at Addis Ababa, 19-22 June 1990. The Joint Unit also took part in various meetings and conferences organized by ECA where matters related to transnational corporations were discussed.

153. The Joint Unit supported the technical assistance and advisory services activities carried out by ECA in collaboration with the Centre. The Joint Unit was also an active member of the ECA Task Force on Environment and of the ECA/UNESCO Joint Consultation Team.

154. During 1990, missions were undertaken to a number of African countries (Ethiopia, Ghana, Nigeria and the United Republic of Tanzania) to review issues relating to less developed countries, to assess the role of transnational corporations in the services sector, and to collect data on the operations of those corporations and foreign direct investment.

E. Joint Unit established with the Economic and Social Commission for Western Asia

155. In 1990, the Joint Unit, in cooperation with the Joint Unit with ECE, prepared a draft of the first part of a technical study on Arab petrochemicals and rising protectionism in the developed market economies: the case of the European Community. The completed part of the study identifies Arab producers and their European and non-European competitors, for 19 basic petrochemical products of special interest to the Arab region. It also reviews the present and assesses possible future demand for selected products.

156. With the exception of the first phase of the study on petrochemicals, and some follow-up activities, the operation of the Joint Unit was suspended in August 1990 owing to the prevailing situation in Baghdad.

Notes

1/ Official Records of the Economic and Social Council, 1990, Supplement No. 6 (E/1990/26), para. 144 (c).

2/ United Nations publication, Sales No. E.90.II.A.11.

3/ United Nations publication, Sales No. E.90.II.A.5.

4/ United Nations publication, Sales No. E.90.II.A.7.

5/ United Nations publication, Sales No. E.90.II.A.8.

6/ United Nations publication, Sales No. E.90.II.A.2.

7/ United Nations publication, Sales No. E.90.II.A.26.

8/ United Nations publication, Sales No. E.90.II.A.16.

9/ United Nations publication, Sales No. E.90.II.A.15.

10/ United Nations publication, Sales No. E.90.II.A.14.

11/ United Nations publication, Sales No. E.90.II.A.17.

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ACTIVITIES OF THE UNITED NATIONS CENTRE ON TRANSNATIONAL CORPORATIONS

STRENGTHENING THE NEGOTIATING CAPACITY OF DEVELOPING COUNTRIES IN THEIR DEALINGS WITH TRANSNATIONAL CORPORATIONS

ONGOING AND FUTURE RESEARCH

COMPREHENSIVE INFORMATION SYSTEM

Activities of the United Nations Centre on Transnational Corporations and the activities of the joint units established with the regional commissions

Report of the Secretary-General

Corrigendum

Replace table 4 with the table on the following page.

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* E/C.10/1991/1.

Table 4. Extrabudgetary expenditures on advisory projects: 1990 a/

(United States dollars)

	Trust Fund	UNDP
Africa	84 078	756 853
Angola	--	217 049
Cameroon b/	4 671	--
Egypt	--	60 406
Ethiopia b/	8 560	234 229
Ghana	15 001	--
Guinea b/	--	9 867
Mozambique b/	4 000	--
Namibia b/	21 038	--
Seychelles b/	--	18 067
Sierra Leone b/	--	145 699
Uganda b/	13 408	--
United Republic of Tanzania b/	15 100	--
Regional b/	2 300	112 284
Latin America	36 480	69 177
Bolivia	8 127	--
Colombia	5 066	--
Nicaragua	11 887	--
Regional	11 400	69 177
Asia and the Pacific	32 693	643 775
Bangladesh b/	--	7 458
China	--	12 000
Democratic People's Republic of Korea	--	90 700
Lao People's Democratic Republic b/	--	28 409
Malaysia	5 477	9 232
Mongolia	27 216	--
Nepal b/	--	15 438
Papua New Guinea	--	19 658
Thailand	--	17 869
Viet Nam b/	--	4 000
Regional	--	398 263
Western Asia	6 628	--
Regional	6 628	--
Total expenditures	159 879	1 469 805
Share of low-income countries of total expenditures (percentage)	43	39

Note: An em dash (--) indicates that the amount is nil or neglible.

a/ Preliminary figures.

b/ Low-income economies: per capita gross national product less than $700 (1986).

UNITED
NATIONS

E

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COMMISSION ON TRANSNATIONAL CORPORATIONS
Seventeenth session
10-19 April 1991
Item 2 of the provisional agenda*

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Question of expert advisers

Note by the Secretariat

1. At its sixteenth session, the Commission on Transnational Corporations decided to postpone the selection of four expert advisers whose nomination could not be confirmed in time for that session. It authorized the Executive Director of the United Nations Centre on Transnational Corporations, in consultation with the Chairman of the Commission, to fill the vacancies. 1/

2. Biographical information on the four expert advisers selected is contained in the annex below.

Notes

1/ Official Records of the Economic and Social Council, 1990, Supplement No. 6 (E/1990/26), chap. XII.

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* E/C.10/1991/1.

Annex

LIST OF CANDIDATES

A. Trade union background

Chakufwa CHIHANA (Malawi)	Education:	M.A. in Peace, Strategic Studies and Political Economy, Bradford University, United Kingdom of Great Britain and Northern Ireland
	Present posts:	Secretary-General of the Southern African Trade Union Coordination Council
		Vice President, African Association of Human and People's Rights
	Posts held:	General Secretary, Commercial and General Workers' Union, Malawi
		Director of International Affairs, Kenya Organization of Trade Unions
		Head of Documentation, International Labour Office for East and Southern Africa
Rudolph A. OSWALD (United States of America)	Education:	Ph.D., Georgetown University, Washington, D.C.
	Present posts:	Director of Economic Research, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
		Member, Advisory Committee on Trade Negotiations, Panel of Economic Advisers to the Congressional Budget Office and Labor Advisory Committee
		Serves on Boards on the National Bureau of Economic Research, the National Planning Association and the Joint Council on Economic Research

	Posts held:	Research Director of the Service Employees' International Union and the International Association of Fire Fighters
		Assistant Director, AFL-CIO Education Department
		President, Industrial Relations Research Association
Gosta KARLSSON (Sweden)	Education:	M.A., Political Economics, Göteborg University
	Present post:	Economist, Swedish Confederation of Professional Employees
	Posts held:	Accountant, AB Gosta Arfvedsson
		Research Officer, Swedish Confederation of Professional Employees

B. Academic or other background

Sylvia OSTRY (Canada)	Education:	Ph.D., Economics, McGill University and Cambridge University
	Present posts:	Chairman, Centre for International Studies, University of Toronto
		Chairman, National Council of the Canadian Institute of International Affairs
		Western Co-Chairman, Blue Ribbon Commission for Hungary's Economic Recovery
		Director, Power Financial Corporation
		Member, International Advisory Board, Bank of Montreal and Syntex

Advisory Board Member, Centre for European Policy Studies, Brussels, and Institute of International Economics, Washington, D.C.

Member, Group of Thirty, Washington, D.C.

Posts held:

Chief Statistician, Federal Government of Canada

Deputy Minister of Consumer and Corporate Affairs

Chairman of the Economic Council of Canada

Deputy Minister of International Trade

Ambassador for Multilateral Trade Negotiations

Prime Minister's Personal Representative for the Economic Summit

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